



Gregorio Gomez, Mayor
Rosa Vasquez, Mayor Pro Tem
Paul Boyer, Council Member
Ruben Macareno, Council Member
Tina Hernandez, Council Member

**Farmersville City Council
Regular Meeting**

Monday, April 27, 2020 6:00 PM
Meeting held in Civic Center Council Chambers
– 909 W. Visalia Road Farmersville, California

**Pursuant to Governor Newsom's Executive Order N-25-20,
the City of Farmersville will be allowing the public, staff, and City
Council to attend this meeting via Zoom Meeting.**

Please dial 1-669-900-6833

Meeting ID: 932 688 72044

Password: 182115

- 1. Call to Order:**
- 2. Roll Call:**
- 3. Invocation:**
- 4. Pledge of Allegiance:**
- 5. Public Comment:**

Provides an opportunity for members of the public to address the City Council on items of interest to the public within the Council's jurisdiction and which are not already on the agenda this evening. It is the policy of the Council not to answer questions impromptu. Concerns or complaints will be referred to the City Manager's office. Speakers should limit their comments to not more than two (2) minutes. No more than twenty (20) total minutes will be allowed for Public Comment. For items which are on the agenda this evening, members of the public will be provided an opportunity to address the council as each item is brought up for discussion. Comments are to be addressed to the Council as a body and not to any individual Council Member.

6. Presentations:

A. Status of Wastewater Treatment Plant Project

7. Consent Agenda:

Under a CONSENT AGENDA category, a recommended course of action for each item is made. Any Council Member or Member of the Public may remove any item from the CONSENT AGENDA in order to discuss and/or change the recommended course of action, and the Council can approve the remainder of the CONSENT AGENDA.

A. Minutes of Regular City Council Meeting of April 13, 2020.

Recommend approval of minutes.

Documents: Draft Action Minutes of April 13, 2020.

B. Waive the second reading and adopt Ordinance 502 to update the City of Farmersville Municipal Code to become compliant with SB 998 and Government Code 116900

Recommend that the City Council waive the second reading and adopt Ordinance 502 to update the City of Farmersville Municipal Code to become compliant with SB 998 and Government Code 116900.

Documents: Ordinance 502

C. Authorize purchase of Street Right-of-Way from Susan Canvasser and Richard Tomlinson in the amount of \$35,500 and approve Right of Way Agreement; and accept Grant Deed and authorize to execute Deed Certification

Recommend that the City Council:

- 1) Authorize the purchase of street right-of-way on N. Farmersville Blvd. from Susan Canvasser and Richard Tomlinson located as shown on the attached map in the amount of \$35,500; and
- 2) Accept the attached Grant Deed for street right-of-way purposes from Susan Canvasser and Richard Tomlinson and authorize to execute and the City Clerk to attest and record said deed; and
- 3) Approve the attached Right of Way Agreement.

Documents: Grant Deed APNs 128-210-037, 128-210-058
Right of Way Agreement

D. Authorization for Request for Proposal for design services for Farmersville Community Park Phase III – The Sequoia Gateway Area

Recommend that the City Council authorize staff to create and publish a Request for Proposal for design services for Farmersville Community Park Phase III – The Sequoia Gateway Area.

E. Contract with 4 Creeks for Construction Management & Resident Engineer Services for the East Walnut Avenue Improvements ATP Project in the amount of \$100,026

Recommend that the City Council approve contract with 4 Creeks for Construction Management & Resident Engineer Services for the East Walnut Avenue Improvements ATP Project in the amount of \$100,026.

Documents: Draft Agreement

8. General Business

A. Authorize the City Manager to sign a purchase agreement with Smeal for the building of a Fire Engine for the City of Farmersville Fire Department

Recommend that the City Council authorize the City Manager to sign a purchase agreement with Smeal for the building of a Fire Engine for the City of Farmersville Fire Department.

Documents: Purchase Agreement
Memo to the City Manager from the Chief of Police

B. Tulare County Economic Development Corporation Membership

Recommend that the City terminate its membership effective July 1, 2020.

Documents: Tulare County EDC Agenda Report dated April 22, 2020

9. Council Reports

A. City Council Updates and Committee Reports

10. Staff Communications:

11. Future Agenda Items

1. Discuss Groundwater Recharge Projects
2. Farmersville 60th Anniversary Celebration
3. Discuss Street Sweeping & Parking Violations

12. Adjourn To Closed Session

A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code Section 54957(b)(1)

Title: City Manager

13. Reconvene to Open Session:

14. Adjournment:

NOTICE TO PUBLIC

The City of Farmersville Civic Center and City Council Chambers comply with the provisions of the Americans with Disabilities Act (ADA). Anyone needing special assistance please contact City Hall at (559) 747-0458 please allow at least six (6) hours prior to the meeting so that staff may make arrangements to accommodate you.

Materials related to an item on this agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City's offices during normal business hours.

Drafted by: J. Gomez

Strong Roots.....Growing Possibilities



Gregorio Gomez, Mayor
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Please dial 1-669-900-6833

Meeting ID: 886 852 862

Password: 923946

1. **Call to Order:** 6:04pm
2. **Roll Call:** Gomez, Vasquez, Boyer (video), Hernandez, Macareno (video)
3. **Invocation:** Mayor Gomez
4. **Pledge of Allegiance:** Mayor Pro Tem Vasquez
5. **Public Comment:**

Provides an opportunity for members of the public to address the City Council on items of interest to the public within the Council's jurisdiction and which are not already on the agenda this evening. It is the policy of the Council not to answer questions impromptu. Concerns or complaints will be referred to the City Manager's office. Speakers should limit their comments to not more than two (2) minutes. No more than twenty (20) total minutes will be allowed for Public Comment. For items which are on the agenda this evening, members of the public will be provided an opportunity to address the council as each item is brought up for discussion. Comments are to be addressed to the Council as a body and not to any individual Council Member.

Paul Saldana- Paul Saldana, President & CEO, Tulare County Economic Development Corporation let council know that the EDC launched www.Covid19BizAssist.com to provide information to businesses of the programs and services that are available to assist them.

6. **Presentations:** none
7. **Consent Agenda:**

Under a CONSENT AGENDA category, a recommended course of action for each item is made. Any Council Member or Member of the Public may remove any item from the CONSENT AGENDA in order to discuss and/or change the recommended course of action, and the Council can approve the remainder of the CONSENT AGENDA.

A. Minutes of Regular City Council Meeting of March 23, 2020.

Recommend approval of minutes.

Documents: Draft Action Minutes of March 23, 2020.

B. Finance Update for March 2020: Warrant Register and Investment Summary

Recommend that the City Council:

1. Approve the Warrant Register as presented for the period. This reporting period represents warrants issued for the current Fiscal Year (2019/2020); and
2. Accept the Investment Summary as presented for the period. This reporting period represents investment summary for the previous month.

Documents: March 2020 Warrant Register
Investment Summary March 2020

C. Zoning Ordinance Amendment 2020-01 regarding recycling businesses and mobile food vendors in the CC zone (Central Commercial)

Recommend that the City Council waive the second reading and adopt Ordinance 500 approving an amendment to the Zoning Ordinance to prohibit recycling businesses in the CC zone and to also require the removal of mobile food vendor vehicles when not in use in the CC zone.

Documents: Ordinance 500

D. Agreement with Hamner, Jewell & Associates for On-Call Professional Services

Recommend that the City Council approve an agreement with Hamner, Jewell & Associates.

Documents: Agreement

E. Authorize purchase of Street Right-of-Way from Brenda Lee Brinson in the amount of \$2,250 and approve Right of Way Agreement; and accept Grant Deed and authorize to execute Deed Certification

Recommend that the City Council:

- 1) Authorize the purchase of street right-of-way on Road 164 from Brenda Lee Brinson located as shown on the attached map in the amount of \$2,250; and
- 2) Accept the attached Grant Deed for street right-of-way purposes from Brenda Lee Brinson and authorize to execute and the City Clerk to attest and record said deed; and
- 3) Approve the attached Right of Way Agreement.

Documents: Grant Deed APN 111-202-042
Right of Way Agreement

- F. Authorize purchase of Street Right-of-Way from BDHOV LP, LEHOV LP, WRHOV LP, and JDHOV LP in the amount of \$8,741 and approve Right of Way Agreement; and accept Grant Deed and authorize to execute Deed Certification**

Recommend that the City Council:

- 1) Authorize the purchase of street right-of-way on N. Farmersville Blvd. from BDHOV LP, LEHOV LP, WRHOV LP, and JDHOV LP located as shown on the attached map in the amount of \$8,741; and
- 2) Accept the attached Grant Deed for street right-of-way purposes from BDHOV LP, LEHOV LP, WRHOV LP, and JDHOV LP and authorize to execute and the City Clerk to attest and record said deed; and
- 3) Approve the attached Right of Way Agreement.

Documents: Grant Deed APN 128-230-036
Right of Way Agreement

- G. Consider Continued Participation in the State and Federal Surplus Property Program via Adoption of Resolution 2020-013**

Recommend that the City Council approve Resolution 2020-013 authorizing application for renewal of participation in the State and Federal Surplus Property Program and authorize the Mayor and City Clerk to sign documents indicating the Cities desire to continue participation in the program.

Documents: Debarment Form, Renewal Checklist, SASP Form 203, SASP Form 204, Terms and Conditions, SASP Form 201-A (Resolution 2020-013)

- H. Authorize purchase of Street Right-of-Way from Rick Osborn, Brent Baker and Kristi Baker in the amount of \$133,000.00 and approve Right of Way Agreement; and accept Grant Deed and authorize to execute Deed Certification**

Recommend that the City Council:

- 1) Authorize the purchase of street right-of-way on Farmersville Blvd. from Rick Osborn, Brent Baker and Kristi Baker, located as shown on the attached map in the amount of \$133,000.00; and
- 2) Accept the attached Grant Deed for street right-of-way purposes from Rick Osborn, Brent Baker and Kristi Baker, and authorize to execute and the City Clerk to attest and record said deed; and
- 3) Approve the attached Right of Way Agreement.

Documents: Grant Deed APNs 128-210-036, 128-220-067, 128-220-068, 128-220-069, 128-220-070
Right of Way Agreement

I. Authorization to Bid the Farmersville WWTP Effluent Pond Distribution Piping Project

Recommend that the City Council authorize staff to advertise the City of Farmersville's WWTP Effluent Pond Distribution Piping Project for bidding purposes.

J. Resolution 2020-011 adopting a list of projects funded by SB 1: The Road Repair and Accountability Act Road Maintenance and Rehabilitation Account

Recommend that the City Council adopt Resolution 2020-011.

Documents: Resolution 2020-011

Motion to approve Consent Agenda items A-J

Result: Approved Mover: Councilmember Hernandez Second: Mayor Pro Tem Vasquez Ayes: Gomez, Vasquez, Boyer, Hernandez, Macareno Noes: 0 Abstain: Boyer abstained from items Warrant Register and Investment Summary Absent : 0

8. General Business

A. CDBG 2018 Grant Payments to CSET for Senior Services in the amount of \$17,347.84

Recommend that the City Council authorize reimbursement to CSET for services rendered pursuant to the CDBG 2018 Subrecipient Agreement in the amount of \$17,347.84.

Documents: Table of Expenses

Motion to approve as presented

Result: Approved
Mover: Councilmember Hernandez
Seconder: Mayor Pro Tem Vasquez
Ayes: Gomez, Vasquez, Boyer, Hernandez, Macareno
Noes: 0
Abstain: 0
Absent : 0

B. Public Hearing to consider the adoption of the new water service discontinuation policy by Resolution 2020-012 and waive the first reading of Ordinance 502 in order for the City of Farmersville to become compliant with SB 998 and Government Code 116900

Recommend that the City Council adopt the new water service discontinuation policy by Resolution 2020-012 and waive the first reading of Ordinance 502 in order for the City of Farmersville to become compliance with SB 998 and Government Code 116900.

Documents: Resolution 2020-012
Ordinance 502

Mayor Gomez opened the Public Hearing at 6:27pm and with no comments given, closed the Public Hearing at 6:27pm

Councilmember Boyer- Wanted to make sure that the City Attorney had reviewed all the information. Also inquired about possible funds for unpaid water bills.

Mayor Gomez- Would like to see monthly lists of delinquent water bills.

Motion to introduce and waive first reading of Ordinance 502 and adopt resolution 2020-012.

Result: Approved
Mover: Mayor Pro Tem Vasquez
Seconder: Councilmember Hernandez
Ayes: Gomez, Vasquez, Boyer, Hernandez, Macareno
Noes: 0
Abstain: 0
Absent : 0

C. California COVID-19 (EM-3428) FEMA Application

Recommend that the City Council designate the City Manager as the City's agent to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services to obtain certain federal financial assistance pertaining to disasters

Documents: Project Assurances for Federal Assistance
Designation of Applicant's Agent Resolution

Motion to approve as presented

Result: Approved Mover: Councilmember Boyer Seconded: Mayor Pro Tem Vasquez Ayes: Gomez, Vasquez, Boyer, Hernandez, Macareno Noes: 0 Abstain: 0 Absent : 0

D. Discussion on requesting the number of confirmed cases and deaths in the City of Farmersville from the County of Tulare.

Recommend that the City Council provide direction to the City Attorney.

Mayor Gomez would like the City Attorney to investigate getting Farmersville's confirmed cases and deaths. The consensus of the City Council was for the City Attorney to prepare and submit a letter to the County Health and Human Services Agency requesting the information.

9. Council Reports

A. City Council Updates and Committee Reports

Macareno- Would like to make sure that we provide the Residents with as much information regarding COVID-19 as possible.

Boyer- Would like to know from Public Works the timeline for pulling weeds on Visalia Road. Checked with Public Works regarding gopher control. Inquired about new Hemp Ordinance.

Gomez- Thanked Public Works for quick turn around with removing graffiti. Wants to also make sure that we are putting as much information about COVID-19 on Web Page and Social Media.

10. Staff Communications:

Gomez- Received information regarding 2020 Census, Farmersville is doing very good so far with getting information back to them. Three proposals for East Walnut came in, award for the contract will be at next council meeting April 27. North Farmersville only has one more right-away that needs to be completed, would like to have a special meeting regarding last right-away. 330 N Farmersville Blvd has gone into Escrow.

Huntley- Future Agenda Items regarding Development Impact Fees and Master Fee Schedule are being worked on.

Krstic- Fire Office has moved to the barracks until office has been remodeled.

11. Future Agenda Items

1. Discuss Groundwater Recharge Projects
2. Farmersville 60th Anniversary Celebration
3. Discuss Street Sweeping & Parking Violations
4. Status of WWTP

12. Adjourn to Closed Session:

Mayor Gomez adjourned to closed session at 7:26pm

A. CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

Agency designated representative:

Jennifer Gomez, Steve Huntley, and Michael Schulte

Employee organization:

Miscellaneous Employees Association

Mid-Management Employee Association

International Brotherhood of Teamsters Local 517

Police Officers Association

13. Reconvene to Open Session:

Mayor Gomez reconvened at 8:23pm

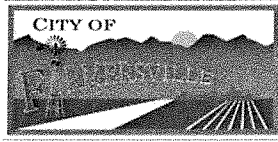
14. Closed Session Report (if any): *There was nothing to report.*

15. Adjournment:

Mayor Gomez adjourned the meeting at 8:23pm

Respectfully submitted,

Rochelle Giovani
City Clerk



City Council

Staff Report 7B

TO: Honorable Mayor and City Council

FROM: Steve Huntley, Director of Finance & Administration

DATE: April 27, 2020

SUBJECT: Waive the second reading and adopt Ordinance 502 to update the City of Farmersville Municipal Code to become compliant with SB 998 and Government Code 116900

RECOMMENDED ACTION

Waive the second reading and adopt Ordinance 502 to update the City of Farmersville Municipal Code to become compliant with SB 998 and Government Code 116900.

BACKGROUND & DISCUSSION:

Ordinance 502 was introduced and the first reading waived at the April 13th City Council meeting. A public hearing was held and no comments were given. Council adopted Resolution 2020-012 adopting the City of Farmersville Water Service Discontinuation Policy.

Senate Bill 998 (Government Code 116900), the Water Shutoff Protection Act, was signed by former Governor Brown in September 2018. The new legislation impacts current policies and procedures related to discontinuing water service for delinquent accounts. SB 998 requires all "urban and community water systems" to have a written policy on the discontinuation of residential service and translated into other languages.

The government code does not allow water services to be discontinued due to non-payment if the customer meets certain financial, medical, and other tests even if they have not paid a bill for 60 days. Once 60 days delinquency occurs, and the customer meets the other tests, the City must offer several different communication methods in order to provide access to the policy in multiple languages, in hard copy or electronic versions, and provide repayment options with a term of an undefined length, or even take over an account from a landlord.

The City's ordinance must be amended to comply with the 60-day delinquency period requirements under SB 998. The current water ordinance states water service may be interrupted if the outstanding amount owed becomes too high. The City proposed changes would remove this language from the ordinance and have the new SB 998 required interruption of Residential Water Service Policy set forth when residential water service may be interrupted for nonpayment.

FISCAL IMPACT

This will have a significant impact financially on the City of Farmersville. This is another unfunded mandate from the State with which the City must become compliant. In addition to the cost of time spent navigating the vague requirements of the law, staff has also had to rebuild the entire utility billing process and introduce a new payment plan process in the billing system at a significant cost of staff time, and hiring software consultants and form designers, translators, and other professionals to ensure a working system that is also compliant.

Since collection of fees owed will become significantly slower, the Water Utility fund will continue to suffer and likely end up in a more adverse financial position than currently, threatening the safety and viability of future operations of the Enterprise entirely.

City staff anticipates that further upgrades will be required to keep up with more and more compliance requirements. More staff may be needed to meet these new communication requirements in the Finance (to manage more complicated payment operations), Public Works (to manage the increased meter reading and communication efforts with more customers), and Code Enforcement (to deal with the increased amount of properties without proper utility services) to operate effectively and stay in compliance. This is highly problematic considering that this Utility Enterprise is not able to earn enough income to operate properly as it is currently.

Potential solutions include further increasing rates to residents or outsourcing the operation of the Water Utility Enterprise to another provider like CalWater that have the economies of scale to handle increasing compliance mandates such as SB 998 effectively.

ATTACHMENT(S):

Ordinance 502

ORDINANCE 502

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FARMERSVILLE AMENDING CHAPTER 13.04 - WATER

The City Council of the City of Farmersville does ordain as follows:

Section 1. Chapter 13.04 of the City of Farmersville Municipal Code is hereby amended to read as follows:

CHAPTER 13.04 - WATER

Sections:

- 13.04.010 Title.
- 13.04.020 Definitions.
- 13.04.030 Notices to Customers.
- 13.04.040 Water Rates.
- 13.04.050 Basis for Rates.
- 13.04.060 Application for Utility Service.
- 13.04.070 Undertaking of Applicant.
- 13.04.080 Establishment and Maintenance of Credit.
- 13.04.090 Guarantee Deposit.
- 13.04.100 Return of Guarantee Deposit.
- 13.04.110 Billing.
- 13.04.120 Billing Period.
- 13.04.130 Opening and Closing Bills.
- 13.04.140 Payment for Service.
- 13.04.150 Payment of Bills.
- 13.04.160 Disputed Charges.
- 13.04.170 Adjustment of Fees.
- 13.04.190 Appeal of Water Billing.
- 13.04.200 Water Billing-Delinquent Account – Service Resumption Upon Payment-Fee.
- 13.04.230 Prior Service – Delinquent Accounts.
- 13.04.240 Discontinuance Upon Vacating Premises.
- 13.04.250 Unlawful Restoration or Disconnection of Service.
- 13.04.260 Water Service Installation.
- 13.04.270 Specifications and Construction.
- 13.04.280 Ownership of Service Connection.
- 13.04.290 Responsibility for Service Connection on Customer Premises.

13.04.300	Damage to Water Service Connection.
13.04.310	Service Connection Obstructions.
13.04.320	Ingress and Egress.
13.04.330	Facilities Exceeding Needs.
13.04.340	Number of Services per Premises.
13.04.350	Supply to Separate Premises.
13.04.360	Installation – Location.
13.04.370	Relocation.
13.04.380	Changes in Customer's Equipment.
13.04.390	Responsibility for Customer's Equipment.
13.04.400	Customer Control Valve.
13.04.410	Water Meter Required.
13.04.420	Meter Location.
13.04.430	Meters – Reading.
13.04.440	Defective Meter – Estimated Water Billing.
13.04.450	Informing of Applicant in Case of Extension of Distribution Mains.
13.04.460	Distribution Mains Extensions – Terms and Conditions.
13.04.470	Use of Public Water Supply.
13.04.480	Water Pressure and Supply.
13.04.490	Supplying Another Person.
13.04.500	Sale, Resale or Delivering Water.
13.04.510	Use of Water Without Application.
13.04.520	Right to Contract Separately.
13.04.540	Emergency Disconnection.
13.04.550	Cross-Connection.
13.04.560	Ground-Wire Attachments.
13.04.570	Fire Protection Sprinkler System.
13.04.580	Fire Hydrant Obstructions.
13.04.590	Use of Private Property Fire Hydrants.
13.04.600	Moving of Fire Hydrants.
13.04.610	Water for Fire Storage Tanks.
13.04.620	Water Pressure and Supply.
13.04.630	Temporary Water Connection – Duration of Service.
13.04.640	Temporary Water Connection – Deposit.
13.04.650	Temporary Water Connection – Installation and Operation.
13.04.660	Temporary Water Connection – Responsibility for Installation.
13.04.670	Temporary Water Service – From a Fire Hydrant.
13.04.680	Temporary Water Service – Unauthorized Use of Hydrants.
13.04.690	Temporary Water Service – Rates.
13.04.700	Temporary Water Service – Credit.

- 13.04.710 Compliance with Water Regulations.
- 13.04.720 Tampering with City Property Violation – Penalty.
- 13.04.730 Liability.

13.04.010 TITLE.

This chapter shall be known and may be cited as the "City of Farmersville Water Service Regulations."

13.04.020 DEFINITIONS.

For the purpose of this chapter, the words set out in this chapter shall have the following meanings or those meanings expressed in Section 1.04.010 of this code:

- A. "Billing department" is that section of the administrative department of the City that is responsible for the processing of accounts receivable for the City.
- B. "City manager" means the city manager of the City or his designated representative.
- C. "Comprehensive fee schedule" means the resolution of the city council that is adopted from time to time to impose, revoke, adjust or modify rates for city services.
- D. "Cross-connection" means any physical connection between the piping system from the city service and that of any other water supply that is not, or cannot be, approved as safe and potable for human consumption, whereby water from the unapproved source may be forced or drawn into the city distribution mains.
- E. "Curb stop" means a water service shutoff valve installed on the water service pipeline near the property line, sidewalk or curb and between the water main and the customers service line.
- F. "Customer" means any person, firm, or corporation, whether the owner or occupant, requiring or receiving service from the city's water mains to water pipes on any real property.
- G. "Department of public works" means the water division of the department of public works.
- H. "Director of public works" means the director of public works for the City.
- I. "Distribution mains" means water lines in streets, highways, alleys, and easements used for public and private fire protection and for general distribution of water.
- J. "Finance director" means the director for the City of Farmersville finance department.
- K. "Fire chief" means the officer of the Tulare County Fire Department or the officer of a city-operated fire department in charge at the scene of a fire within the city limits of the City.
- L. "Fire Hydrant" means a stationary device for obtaining water from the water distribution system for fire-fighting or temporary construction purposes.

- M. "Landscape water service" means a separate metered water service rendered for landscape irrigation purposes on a permanent basis and for which the general rates and regulations are applicable.
- N. "Premises" means a lot or parcel of real property under one ownership, except where there are well-defined boundaries or partitions such as fences, hedges or other restrictions preventing the common use of the property by the several tenants, in which case each portion shall be deemed separate premises. Apartment houses and office buildings and structures of like nature may be classified as single premises.
- O. "Private fire protection service" means water service and facilities for building sprinkler systems, hydrants, hose reels and other facilities installed on private property for fire protection and the water available therefor.
- P. "Public fire protection service" means the service and facilities of the entire water supply, storage and distribution system of the City, including the fire hydrants affixed thereto, and the water available for fire protection, excepting house service connections and appurtenances thereto.
- Q. "Public Works Water Shut-off Policy" means the policy established and fixed by city council resolution to enumerate the City of Farmersville's administrative actions for the collection of delinquent accounts, including notifications, fee assignments, and discontinuation of water service.
- R. "Regular water service" means water service and facilities rendered for normal domestic, commercial and industrial purposes on a permanent basis, and the water available therefor.
- S. "Service connection" means the pipeline and appurtenant facilities such as the curb stop, meter and meter box, if any, all used to extend water service from a distribution main to premises. Where services are divided at the curb or property line to serve several customers, each such branch service shall be deemed a separate service.
- T. "Temporary water service" means water service and facilities rendered for construction work and other uses of duration no longer than thirty days and the water available therefor.
- U. "Water department" means the department which shall construct, operate and maintain the City's water distribution system, and such department is hereby established within the department of public works.
- V. "Water Meter" means a device for measuring and registering the quantity of water used by a customer.

13.04.030 NOTICES TO CUSTOMERS.

Notices from the City to customers will be given in writing unless otherwise in this chapter, and either delivered, mailed or electronically emailed to the customer using the information listed upon the customers most current application for utility service.

13.04.040 WATER RATES:

Water rates shall be established and fixed, from time to time, by resolution of the city council according to the standard set forth in Section 13.04.050.

13.04.050 BASIS FOR RATES.

In fixing and establishing water utility rates, fees or charges, the city council shall be guided by, and conform to, the following standards:

- A. Water rates, fees or charges shall be sufficient to recover all costs or expenses incurred by the water utility, such as:
 - 1. Operation, maintenance, salaries, wages and benefits.
 - 2. Depreciation and replacement of obsolete treatment, storage, main lines or equipment in the distribution system.
 - 3. Capital improvement program.
 - 4. Research for and, if feasible, development of alternative water supplies.
 - 5. Payments of bonded indebtedness or other financing methods, including principal, interest, and any required reserves.
 - 6. Reserves for contingencies or unanticipated expenditures.
 - 7. Other reasonable charges or transfer expenses that may occur from time to time.

13.04.060 APPLICATION FOR UTILITY SERVICE.

Each applicant for water service shall be required to complete an application for utility services. Service will be activated by Public Works by the end of the following business day.

13.04.070 UNDERTAKING OF APPLICANT.

The signing of such application will signify the customer's willingness and intention to comply with this and other ordinances or regulations relating to water service provided by the City and to make payment for water service provided as required in this chapter.

13.04.080 ESTABLISHMENT AND MAINTENANCE OF CREDIT.

Each applicant for service shall establish and maintain credit to the satisfaction of the City by a guarantee deposit, and the payment of all service charges as provided for in this chapter, for each service.

13.04.090 GUARANTEE DEPOSIT.

- A. A guarantee deposit shall be established as provided for in the City's comprehensive fee schedule.

- B. Such guarantee deposit will be collected prior to opening of service(s).
- C. No interest will be paid on guarantee deposits.
- D. A guarantee deposit shall be paid by every customer whether owner or renter, and regardless if prior service has been satisfactorily provided for each service under the customer's control or ownership.

13.04.100 RETURN OF GUARANTEE DEPOSIT.

- A. The guarantee deposit with the City made by a customer will be returned upon the discontinuance of service to the depositing customer and upon payment of all charges due the City for utility services.
- B. The guarantee deposit will be refunded to all accounts after one full year of service, with the City, provided the customer has not incurred any delinquent shutoffs during the year. The guarantee deposit refund, for those customers' who have completed one full year without incurring a delinquent shutoff, will automatically be made by deducting it from the customer's account during the next billing cycle
- C. Any deposit uncalled for within one year from the date service is discontinued will be retained by the City and may be transferred to the City's General Fund.

13.04.110 BILLING.

- A. Water service charges to a property shall begin for a preexisting structure when the service applicant of the property completes and submits an application for utility services.
- B. All water service charges shall be billed to the service applicant.

13.04.120 BILLING PERIOD.

The regular billing period shall be on a monthly basis as determined by the City.

13.04.130 OPENING AND CLOSING BILLS.

Opening and closing bills for less than the normal billing period shall be prorated both as to minimum charges and quantity blocks. Closing bills may be estimated by the City for the final period as an expedient to permit the customer to pay the closing bill at the time service is discontinued or processed in the normal final billing process as determined by the Finance Director.

13.04.140 PAYMENT FOR SERVICE.

All customers shall be responsible to pay for services provided at the rates in effect upon presentation of a city utility bill and all bills not paid by the 15th day of the month following the month service was provided shall otherwise be considered delinquent.

13.04.150 PAYMENT OF BILLS.

Water billing periods, delinquency dates, and the Public Works Residential Water Shut-off Policy shall be established and fixed by city council resolution except for discontinued service which shall be billed as provided in by Section 13.04.240.

13.04.160 DISPUTED CHARGES.

The city manager or designee may adjust bills, and in the event any dispute as to a charge to a customer occurs, the city manager or designee may determine the same, provided, however, that all persons affected shall have the right to appeal such determination to the city council as provided for in Section 13.04.190 of this title, and the decision in respect thereto shall be final and conclusive as to all parties.

13.04.170 ADJUSTMENT OF FEES.

All fees and charges provided for in this chapter or in the Public Works Residential Water Shut-off Policy may be established, adjusted, modified, amended or revoked by resolution of the city council.

13.04.190 APPEAL OF WATER BILLING.

Any customer who disputes the amount due as provided for in this chapter shall have the right to an administrative review by the city manager. Said customer shall file the appeal in writing. The customer will be notified in writing of the city manager's decision. If the decision is in favor of the customer, the customer's water account shall be adjusted accordingly.

If the decision is against the customer, the customer must request the hearing in writing to the city manager within fifteen (15) days of the date of the decision. The customer shall be afforded an appeal to the city council within thirty (30) days of the city manager's decision. Documents used by the city manager shall be submitted to the city council for its review.

Any person aggrieved by the decision of the city council following an appeal, may obtain review of the Administrative Decision of the city council by filing a Petition for Review with the Tulare County Superior Court, Limited Jurisdiction, in accordance with the time lines and provisions as set forth in California Government Code Section § 53069.4.

13.04.200 WATER BILLING-DELINQUENT ACCOUNT – SERVICE RESUMPTION UPON PAYMENT- FEE

Water service will be resumed to a disconnected customer only upon payment in full of the delinquent bill plus the re-establishment fee. This fee must be paid to the City prior to resumption of water service.

13.04.230 PRIOR SERVICE - DELINQUENT ACCOUNTS.

An application for service by a customer for a new location who has a delinquent account for prior service shall not be honored until the delinquent account for prior services plus any penalty fees or charges have been paid in full; and a deposit sufficient to cover future services has been provided.

13.04.240 DISCONTINUANCE UPON VACATING PREMISES.

Customers desiring to discontinue service shall so notify the billing department two (2) days prior to vacating the premises unless discontinuance of service is ordered by the customer or the customer's representative, the customer shall be liable for charges whether or not any water is used.

13.04.250 UNLAWFUL RESTORATION OR DISCONNECTION OF SERVICE.

It shall be unlawful for any person, other than a duly authorized employee of the City to break a water meter seal, disconnect or reconnect water services to any premises. Any person found in violation of this section shall be subject to fees and penalties as set forth by City code or policy. Any contractor or business found to have broken a seal, disconnected or reconnected any water service without authorization by the City, may have said business license revoked.

13.04.260 WATER SERVICE INSTALLATION.

A water service installation shall be made by the City or by a contractor approved by the City. The service will be installed at such location as the applicant requests, provided such requests are reasonable. The service will be installed from the City's nearest water distribution main to the curb line or property line of the premises, but within the City's right-of-way or easement.

13.04.270 SPECIFICATIONS AND CONSTRUCTION.

The size, type, and quality of materials and location of the lines shall be specified by the City and the actual construction will be done by the City or by an approved licensed contractor.

13.04.280 OWNERSHIP OF SERVICE CONNECTION.

All water service connections shall remain the property of the City. The expense of maintenance, repair, renewal or replacement of such services, meters, materials, and boxes due to normal wear and usage shall be borne by the City.

13.04.290 RESPONSIBILITY FOR SERVICE CONNECTION ON CUSTOMER PREMISES.

All facilities installed by the City on private property for the purpose of rendering water service shall remain the property of the City and may be maintained, repaired or replaced by the City without consent or interference of the owner or occupant of the premises.

The property owner, tenant, lessee, agents, employees or contractors shall use reasonable care in the protection of the service connection. No payment shall be made for placing or maintaining the service connection on private property.

13.04.300 DAMAGE TO WATER SERVICE CONNECTION.

Damage to any portion of the water service connection not caused by the City shall be charged to and paid for by the customer for such repairs and/or replacement. The City shall be reimbursed by the customer for any such damage promptly on presentation of a bill.

13.04.310 SERVICE CONNECTION OBSTRUCTIONS.

No person shall place trash, dirt, rock, building materials or other objects or obstructions upon a water service connection. No person shall install or construct any fence within three (3) feet of any water service connection. Nor shall any fence be installed or constructed over the top of any water service connection. No person shall plant vines, trees or shrubs within ten (10) feet of the City's water service connection, or where any such planting shall in any manner make the location of the service connection difficult to determine, or to in any way interfere with, render difficult to determine or inhibit the free access to, or use of, such water service connection.

In the event of such obstruction or obscuring, notice shall be given by the City to the property served by such water meter; such notice shall contain the requirement that the obstruction be removed within seven (7) days.

13.04.320 INGRESS AND EGRESS.

Representatives of the City shall have the right of ingress or egress to the customer premises at reasonable hours for any purpose reasonably connected with the furnishing of water service and at any time in emergency situations where water is needed or is the cause of the emergency.

The City may, after twenty-four (24) hours' written notice, shut off the water service to the premises of any person who as owner, occupant or customer of such premises refuses admittance to or hinders or prevents entry or inspection by an authorized employee of the City.

13.04.330 FACILITIES EXCEEDING NEEDS.

Should the City desire to install facilities greater than are needed to meet said service demands, the cost of the excess size of facilities shall be borne by the City regardless of

who actually installed or paid for said facilities unless a reimbursement agreement is entered into then the applicant may be required to pay all related costs.

13.04.340 NUMBER OF SERVICES PER PREMISES.

The applicant may apply for as many services as may be reasonably required for the premises; provided, that the pipeline system from each service be independent of the others, that they not be interconnected and that each service has a separate water meter. The cost of all services over and above the initial service shall be borne by the applicant.

13.04.350 SUPPLY TO SEPARATE PREMISES.

No service connection shall be hereafter made for the purpose of supplying through a common service, two or more independent customers occupying premises held under the same ownership, unless said premises are on and consist of the same lot, or the property is such as is commonly designated as a court, campground, apartment house or complex, or building covering more than one lot, and then only provided that the owner of said premises shall submit an application for utility services on behalf of all occupants of said premises.

13.04.360 INSTALLATION - LOCATION.

Each water service connection shall be installed in a public street or in an easement or right-of-way under the control of the City.

Where the premises to be served fronts on more than one street, the public works director may designate on which frontage the service connection shall be installed.

13.04.370 RELOCATION.

When a customer requests relocation of an existing meter or service connection for the customer's convenience, the relocation is at the customer's expense on the basis of the actual cost of relocation. When relocation of an existing meter or service connection is done to protect the property of the City or the city's interest, the City shall pay the cost of it.

13.04.380 CHANGES IN CUSTOMER'S EQUIPMENT.

Customers making any material change in the size, character or extent of the equipment or operations utilizing water service, or whose change in operations results in a large increase in the use of water, shall immediately give the City written notice of the nature of the change and, if necessary, amend their application.

13.04.390 RESPONSIBILITY FOR CUSTOMERS EQUIPMENT.

The customer shall, at the customer's own risk and expense, furnish, install and keep in good and safe condition all equipment that may be required for receiving, controlling, applying and utilizing water, and the City shall not be responsible for any loss or damage

caused by the improper installation of such equipment, or the negligence or wrongful act of the customer or any of the customer's tenants, agents, employees, contractors, licensees or permittees in installing, maintaining, operating or interfering with such equipment.

The City shall not be responsible for damage to property caused by faucets, valves, and other equipment that are open when water is turned on at the meter, either originally or when turned on after a temporary shutdown or discontinuance or by said facilities malfunction during regular service.

13.04.400 CUSTOMER CONTROL VALVE.

Every customer shall have a control valve (shut-off valve) installed upon their service line to control the flow of water to their premises. The valve shall be installed:

- A. Either immediately outside the city's meter box on the customers side or upon entry into their structure.
- B. To an existing property which is altered, improved or repaired.
- C. It shall be unlawful for any person to disconnect, reconnect or tamper with the city's curb stop valve.

13.04.410 WATER METER REQUIRED.

A water meter shall be required for all water service connections provided by the City and all water furnished shall be metered and billed pursuant to the established water rates.

As a condition of new construction all builders, developers or property owners shall be financially responsible to purchase and install a new water meter pursuant to current city specifications and requirements.

13.04.420 METER LOCATION.

Meters will be installed at the curb line or at the property line or as close as reasonably possible and shall be owned by the City.

No rent or other charge will be paid by the City for a water meter or the water service connection being located on a customer's premises regardless if said facilities were required by the City.

All meters will be sealed by the City at the time of installation, and no seal shall be altered or broken except by one of its authorized employees or agents.

13.04.430 METERS - READING.

Meters that are read will be read as nearly as possible on the same day of each month. The reading of meters shall be at the sole discretion of the City.

13.04.440 DEFECTIVE METER - ESTIMATED WATER BILLING.

In the event that a water meter becomes inoperative, provides an erratic reading or is non-registering, the defective meter shall be replaced prior to the next regular billing period. The charges for the monthly service for the time period the meter became defective shall then be based upon either of the following:

- A. The minimum monthly rate for the meter size, or
- B. An estimate based upon the actual upon historical usage.

13.04.450 INFORMING OF APPLICANT IN CASE OF EXTENSION OF DISTRIBUTION MAINS.

When an extension of the distribution mains is necessary or a substantial investment is required to furnish service, the applicant will be informed by the City as to whether or not the service can be extended under these regulations.

13.04.460 DISTRIBUTION MAINS EXTENTIONS - TERMS AND CONDITIONS.

Distribution mains will be extended to serve new customers under the following terms and conditions: Prior to the time the main is constructed, the applicant or applicants shall submit a copy of plans and specifications to the director of public works for approval. If the applicant or applicants elect to install the water main, they shall pay a fee as provided for in the City's comprehensive fee schedule as compensation for inspection, engineering, and administrative services performed for the applicant. In addition, the director of public works may require that the applicant provide a performance bond or deposit equal to the total estimated cost of installation to be returned to the applicant upon completion of work.

13.04.470 USE OF PUBLIC WATER SUPPLY.

Every customer shall use reasonable care to prevent the wastage of water and shall not allow continuous streams or excessive amounts of water to run or waste from their property onto streets, alleys, highways, parkways, adjacent properties or ditches.

To that end, customers must keep their water service pipelines, valves, irrigation lines, stopcocks and other apparatus in good repair and free from leakage at their own expense and shall be liable for all damages which may result from their failure to do so. Customers shall comply with water conservation standards set forth in chapter 13.06.

Any customer who after five (5) days notification either in writing or verbally of excessive wastage fails or refuses to reduce wastage may have said water service disconnected. The customer shall be required to reapply for water service and agree in writing to prevent water waste.

All property with a swimming pool may be subject to various fees in addition to the metered water service fee as stated in the City's comprehensive fee schedule.

The department of public works reserves the right to shut off the water in the mains at any time for the purpose of making repairs to mains, services, extensions or for other reasons. It shall be the duty of the public works department to make reasonable effort to

notify customers in advance of such an emergency and when water service is to be suspended and restored.

In case of a fire in the City within reach of the water system, all standpipes, fire plugs, hose connections, faucets and other outlets of such system in the immediate area of the fire shall be subject to the direction of the fire chief and shall be promptly closed, except such as may be used in quenching the fire and preventing the spread of the same, and shall be kept closed until such fire is extinguished.

13.04.480 WATER PRESSURE AND SUPPLY.

The City assumes no responsibility for loss or damage due to lack of water or pressure and merely agrees to furnish such quantities and pressures as are available in its general distribution system at time of need. The service is subject to shutdowns and variations required by the operation of the system.

13.04.490 SUPPLYING ANOTHER PERSON.

It shall be unlawful for any person to sale, supply or furnish water to any other premises or customer, for which said water has been solely designated for use on the premises listed within the water service application.

13.04.500 SALE, RESALE OR DELIVERING WATER.

It shall be unlawful for any person to sale, resell or redistribute water to other customers. This prohibition does not apply to a duly licensed retail establishment who has obtained a business license from the City for such purposes.

13.08.510 USE OF WATER WITHOUT APPLICATION.

Any person who takes possession of a premises and uses water without submitting an application for utility services is liable for all the water delivered from the date of the last recorded meter reading. Any premises found with unauthorized water service shall be immediately discontinued without notice.

13.04.520 RIGHT TO CONTRACT SEPARATELY.

The City reserves the right and power to contract separately with any person, firm, corporation or governmental agency to sale, supply, deliver or provide water service within or outside the incorporated limits of the city, and at rates different than those provided for in this chapter, as established by resolution of the city council.

13.04.540 EMERGENCY DISCONNECTION.

The City reserves the right to immediately disconnect a customer's water services for the following:

- A. Making emergency repairs to a customer's water service connection.
- B. A cross-connection which exists upon the customer's premises.

- C. A customer has an open or damaged sewer lateral causing a spill or the potential of spillage.
- D. A customer's damaged or malfunctioning irrigation system in operation.
- E. An unlawful ground-wire attachment.
- F. Any other purposes found necessary.

The City shall not restore or reconnect water service until the customer corrects any discrepancy so discovered upon the customers premises.

13.04.550 CROSS-CONNECTION.

No person shall make, allow or cause a connection to exist for any purpose whatsoever between the city's water distribution system and any other private source of water supply. Any customer found to have a direct connection with any private source of water supply with the city's water service connection shall be immediately disconnected until such time as the private connection is permanently terminated. If it discovered the private connection is again connected, the City shall permanently remove the city's water service connection at the expense of the property owner.

13.04.560 GROUND-WIRE ATTACHMENTS.

All persons are forbidden to attach any ground-wire or wires to any plumbing which is or may be connected to a service connection or main belonging to the City. The City will hold the customer liable for any damage to City property caused by such ground-wire attachments.

13.04.570 FIRE PROTECTION SPRINKLER SYSTEM.

Fire protection sprinkler system will be furnished by the customer in conformity with the general regulations applicable and as additionally specified in this regulation.

- A. The applicant shall be responsible for the total actual cost of the installation of the service from the distribution main to the customer premises, including the cost of a detector check valve or other suitable and equivalent device, water meter, valve and meter box. Such installation shall become the property of the City.
- B. There shall be no connections between a fire protection sprinkler system and any other water distribution system on the premises.
- C. There shall be no water used through the fire protection sprinkler system except to extinguish accidental fires and for testing firefighting equipment.
- D. Any consumption recorded on the fire protection sprinkler system meter will be charged at double the regular water service rates except that no charge will be made for water used to extinguish accidental fires where such fires have been reported to the fire department.
- E. The monthly rates for fire protection sprinkler system shall be established in the city's comprehensive fee schedule.

- F. If water is used from a fire protection sprinkler system in violation of the agreement or of these regulations, the City may, at its option, discontinue and remove the service.

13.04.580 FIRE HYDRANT OBSTRUCTIONS.

No person shall place trash, dirt, rock, building materials or other objects or obstructions upon or around or adjacent to fire hydrants.

No person shall plant vines, trees, shrubs or other plants within ten (10) feet of a fire hydrant, or where any such planting shall in any manner make the location of the fire hydrant difficult to determine, or to in any way interfere with or render difficult to determine, or to in any way interfere with or render difficult free access to, or use of, such fire hydrant.

In the event of such obstruction or obscuring, notice shall be given by the City to the property adjacent to such hydrant; such notice shall contain the requirement that the obstruction be removed within twenty-four (24) hours.

13.04.590 USE OF PRIVATE PROPERTY FIRE HYDRANTS.

Fire hydrants on private property are for use by the City or by recognized fire protection agencies pursuant to contract with the City. Other parties desiring to use fire hydrants for any purpose must first obtain written permission from the City prior to use and shall operate the hydrant in accordance with instructions issued by the City. Unauthorized use of hydrants will be prosecuted pursuant to city, county, state or federal law.

13.04.600 MOVING OF FIRE HYDRANTS.

When a fire hydrant has been installed in the location specified by the proper authority, the City has fulfilled its obligation. If property owners or other parties desire a change in the size, type or location of the hydrant, they shall bear all costs of such changes. Any change in the location of a fire hydrant must be approved by the public works department and fire chief.

13.04.610 WATER FOR FIRE STORAGE TANKS.

Occasionally, water may be obtained from a private fire service for filling a tank connected with the fire service, but only if written permission is secured from the City in advance and an approved means of measurement is available.

13.04.620 WATER PRESSURE AND SUPPLY.

The City assumes no responsibility for loss or damage due to lack of water or pressure and merely agrees to furnish such quantities and pressures as are available in its general distribution system at time of need. The service is subject to shutdowns and variations required by the operation of the system.

13.04.630 TEMPORARY WATER CONNECTION - DURATION OF SERVICE.

Temporary water connections shall be disconnected and terminated within thirty (30) days after installation unless an extension of time is granted in writing by the public works department.

13.04.640 TEMPORARY WATER CONNECTION - DEPOSIT.

The applicant shall deposit, in advance, the estimated cost of installing and removing the facilities required to furnish said service exclusive of the cost of salvageable material. Upon discontinuance of service the actual cost shall be determined, and an adjustment made as an additional charge, refund or credit. If service is supplied through a fire hydrant, the applicant will be charged in accordance with those rates provided for in the City's comprehensive fee schedule.

13.04.650 TEMPORARY WATER CONNECTION - INSTALLATION AND OPERATION.

All facilities for temporary water connection to the customer's connection shall be made by the public works department or a contractor authorized by the City and shall be operated in accordance with its instructions.

13.04.660 TEMPORARY WATER CONNECTION - RESPONSIBILITY FOR INSTALLATION.

The customer shall use all possible care to prevent damage to the service connection or to any other loaned facilities of the City which are involved in furnishing the temporary water connection from the time they are installed until they are removed, or until forty-eight (48) hours' notice in writing has been given to the City that the contractor or other person no longer requires the temporary water connection.

13.04.670 TEMPORARY WATER SERVICE - FROM A FIRE HYDRANT.

If temporary service is supplied through a fire hydrant, a permit for the use of the hydrant shall be obtained from the City. It is specifically prohibited to operate the valve of any fire hydrant other than by the use of a spanner wrench designed for this purpose.

13.04.680 TEMPORARY WATER SERVICE - UNAUTHORIZED USE OF HYDRANTS.

Tampering with any fire hydrant for the unauthorized use of water therefrom, or for any other purpose, is a misdemeanor, punishable as provided in Chapter 1.12 of this code.

13.04.690 TEMPORARY WATER SERVICE - RATES.

The rates for temporary service shall be those rates provided for in the city's comprehensive fee schedule.

13.04.700 TEMPORARY WATER SERVICE - CREDIT.

The applicant shall pay the deposit sufficient to cover the estimated cost of the temporary service.

13.04.710 COMPLIANCE WITH WATER REGULATIONS.

Customers shall comply with all county, state, and federal law related to water service.

13.04.720 TAMPERING WITH CITY PROPERTY VIOLATION - PENALTY.

It is unlawful for any person, firm or corporation, whether as principal, agent, employee or otherwise, to open any street hydrant, stop cock or gate valve or to tamper with or interfere with any street service, water connection, reservoir, pumping plant or any water meter attached to any service pipe connected with the City mains or water pipes or hydrants of the City, or to turn on and off water mains or water pipes of the City, or to tap, break or injure any water, water pipe, meter or other fittings of the City laid in any street, avenue, alley or other public place or to tamper with, deposit or cause to be deposited in any water main or pipe of the City any fluid or solid matter or substance of any kind or to do any act that might cause water to become polluted, or to take, pump or draw water from any water main, pipe or hydrant of the City without first arranging with the City and paying the established rate therefor.

13.04.730 LIABILITY.

There shall be no liability on the part of the City for damage, loss or inconvenience resulting from sand, gravel, rust, sediment, foreign matter, air, excessive pressure, or hydraulic water hammer in the water distribution system.

Section 2. This Ordinance shall take effect 30 days after adoption and summary shall be published once in the newspaper within fifteen (15) days after its passage.

Passed and adopted at a regular meeting of the City Council of the City of Farmersville, duly called and held on the ____ day of _____, 2020, by the following vote:

Ayes: _____

Noes: _____

Abstain: _____

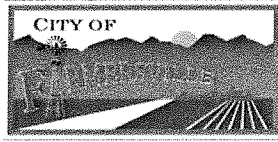
Absent: _____

APPROVED

Greg Gomez
Mayor of the City of Farmersville

ATTEST:

Rochelle Giovani
City Clerk



City Council

Staff Report 7C

TO: Honorable Mayor and City Council

FROM: Jennifer Gomez, City Manager

DATE: April 27, 2020

SUBJECT: Authorize purchase of Street Right-of-Way from Susan Canvasser and Richard Tomlinson in the amount of \$35,500 and approve Right of Way Agreement; and accept Grant Deed and authorize to execute Deed Certification

RECOMMENDED ACTION:

Recommend that the City Council:

- 1) Authorize the purchase of street right-of-way on N. Farmersville Blvd. from Susan Canvasser and Richard Tomlinson located as shown on the attached map in the amount of \$35,500; and
- 2) Accept the attached Grant Deed for street right-of-way purposes from Susan Canvasser and Richard Tomlinson and authorize to execute and the City Clerk to attest and record said deed; and
- 3) Approve the attached Right of Way Agreement.

BACKGROUND and DISCUSSION:

As part of the North Farmersville Boulevard Widening Project there are twenty-three properties that are being impacted, therefore the City is required to acquire the street right-of-ways necessary for the project.

The partial acquisition of the frontage of this property was appraised by Hopper Company and valued at \$35,500.00. The property owner has accepted the City's offer and now requires formal action by the City Council.

FISCAL IMPACT:

A budget for right-of-way acquisition was included in the cost of the project which is being funded by Measure R.

ATTACHMENT(S):

Grant Deed APNs 128-210-037, 128-210-058
Right of Way Agreement

ASSESSOR PARCEL NO.: 128-210-037, 128-210-058
PROJECT: City of Farmersville / N. Farmersville Blvd. Widening
OWNER: Susan E. Canvasser and Richard A. Tomlinson

RIGHT OF WAY AGREEMENT

THIS AGREEMENT is made and entered into by and between

Susan E. Canvasser, as her sole and separate property, aka Susan Canvasser, a married woman as her sole and separate property, and Richard A. Tomlinson, as his sole and separate property (hereinafter collectively called "Grantor"), and

The City of Farmersville, a municipal corporation (hereinafter called "City").

An instrument in the form of a Grant Deed ("Deed") covering the property particularly described therein ("Property"), has been executed concurrently with this Agreement and delivered to City representatives.

In consideration of which, and other considerations hereinafter set forth, it is mutually agreed as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for said document and shall relieve the City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement, except as stated in Paragraphs 2.E. and 2.F. below.

2. The City shall:

A. PAYMENT - Pay to the order of the Grantor the sum of \$35,500 as consideration in full for the Property, for the loss, replacement and moving of any improvements, and for entering into this Agreement. Said sum shall be paid when title to the Property has vested in City free and clear of all liens, encumbrances, assessments, easements and leases recorded or unrecorded, except for recorded public utility easements and public right of way.

B. RECORDATION OF INSTRUMENT - Accept the Deed and cause the same to be recorded in the office of the Tulare County Recorder at such time as when clear title can be conveyed.

C. MISCELLANEOUS COSTS - Pay any escrow, title insurance, and recording fees incurred in this transaction.

D. CLEARANCE OF BONDS, ASSESSMENTS, OR DELINQUENT TAXES - Have the authority to deduct and pay from the amount shown in Clause 2.A. above any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which the Deed records, together with penalties and interest thereon, and/or delinquent and

unpaid non-delinquent assessments which have become a lien as of the date of recordation of the Grant Deed.

E. CONSTRUCTION AND RESTORATION – Shall, upon completion of construction, generally restore Grantor's remaining real property to a comparable or better condition than that which existed prior to City's project construction, to the extent reasonably practical, except vegetation and improvements acquired in paragraph 2(G). During construction and until 30 days after construction completion on these two parcels, or when Grantor directs if sooner than that, City shall have contractor maintain a temporary construction chain link fence at the back of the temporary construction easement area. At least one of the two driveways along Farmersville Blvd. into Grantor's parcels shall be accessible during construction.

F. COST TO CURE – Included in the amount payable under Clause 2(A) is payment in full to compensate Grantor for the expense of performing the following work: replace fencing, replace 2 gates, and install 8 bollards.

G. IMPROVEMENTS – Payment in paragraph 2(A) includes, but is not limited to, payment for chain link fencing, 2 chain link gates, asphalt paving, gravel paving, and 2 bollards, which are considered to be part of the realty and are being acquired by City in this transaction. Grantor may salvage any of these improvements for their own benefit if done before start of construction. City and/or its contractor shall provide written notice of commencement of construction 30 days in advance by U.S. first class mail to Grantor.

H. DRIVEWAY ENCROACHMENT – At no expense to the Grantor, and at the time of roadway construction, the City or its authorized agent will reconstruct any impacted existing driveway approaches. It is understood and agreed that upon completion of said construction, said driveway approaches shall be considered as encroachments under a revocable permit upon the City road, and they are to be maintained, repaired, and operated as such by Grantor in accordance with and subject to pertinent County and State law, and the City's standard encroachment permit provisions.

I. INDEMNIFICATION - Indemnify and hold harmless Grantor from any and all claims, damages, costs, judgments, or liability proximately caused by City or its officers, employees, or agents specifically arising from City construction and restoration work on the Property.

3. The Grantor:

A. PAYMENT ON MORTGAGE OR DEED OF TRUST - Agrees that any or all monies payable under this Agreement up to and including the total amount of the unpaid principal and interest on the note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said mortgage(s) or deed(s) of trust, shall upon demand(s) be made payable to the mortgagee(s) or beneficiary(s) entitled thereunder. Grantor shall cooperate with the Escrow Officer in obtaining lien clearance documents from any and all creditors holding liens against the Property.

B. LEASE INDEMNIFICATION - Warrants there are no oral or written leases on all or any portion of the Property, or if there are such leases, Grantor agrees to hold the City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any lease of said Property held by tenant of Grantor.

C. PERMISSION TO ENTER - Hereby grants to the City, its agents and contractors, permission to enter the Property prior to the close of escrow for the purposes of preparation for the construction of the City's facilities, subject to all applicable terms and conditions contained in this Agreement and the associated Deed. Grantor grants to the City, its agents and contractors, permission to enter the Property for construction purposes upon payment of the compensation set forth in Paragraph 2.A.

D. TITLE INDEMNITY AND WARRANTY - In consideration of the City waiving the requirements to clear any defects and imperfections in all matters of record title, the Grantor indemnifies and holds the City harmless from any and all claims that other parties may make or assert on the title to the Property. Grantor's obligation to indemnify the City shall not exceed the amount paid to the Grantor under this Agreement. Grantor hereby represents and warrants that he/she/they are the sole vested owners of the Property, holding all ownership and possessory rights, and are the authorized signatories to grant the rights referenced in this Agreement without conflict or claims from other parties.

E. HAZARDOUS SUBSTANCES - Represents and warrants, to the best of Grantor's knowledge, and after reasonable inquiry, the following:

During Grantor's ownership of the Property, Grantor knows of no disposal, releases, or threatened releases of hazardous substances on, from, or under the Property or Grantor's remaining adjacent property. Grantor further represents and warrants that Grantor has no knowledge of disposal, release, or threatened release of hazardous substances on, from, or under the Property, or Grantor's remaining adjacent property, which may have occurred prior to Grantor's ownership.

There is no pending claim, lawsuit, agency proceeding, or any administrative challenge concerning the presence or use of hazardous substances on or within the Property or Grantor's remaining adjacent property.

Grantor has not used the Property, or Grantor's remaining adjacent property, for any industrial operations that use hazardous substances. Grantor is not aware of any prior use of such property. Grantor has not installed any underground storage tanks, above ground storage tanks, barrels, sumps, impoundments or other containers used to contain hazardous substances on any part of the Property or Grantor's remaining adjacent property. Grantors are not aware of any such prior installations. The purchase price of the Property being acquired reflects the fair market value of the Property without the presence of contamination. If the Property is found to be contaminated by the presence of hazardous substances which require mitigation under Federal or State law, City may elect to recover its cleanup costs from those who caused or contributed to the contamination.

4. The Parties agree:

A. ESCROW - At City's option, to open an escrow in accordance with this Agreement at an escrow company of City's choice. Opening an escrow shall be at City's sole discretion and City may decide to process this transaction without the use of an escrow agent. However, if an escrow agent is utilized, this Agreement constitutes the joint escrow instructions of City and Grantor, and the escrow agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

If an escrow is utilized, as soon as possible after opening of escrow, City will deposit the executed Deed by Grantor, with Certificate of Acceptance attached, with the escrow agent on Grantor's behalf. City agrees to deposit the purchase price upon demand of escrow agent. City and Grantor agree to deposit with escrow agent all additional instruments as may be necessary to complete this transaction. All funds received in this escrow shall be deposited with other escrow funds in a general escrow fund account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

Any taxes which have been paid by Grantor, prior to opening of this escrow, shall not be pro-rated between City and Grantor, but Grantor shall have the sole right after close of escrow, to apply to the County Tax Collector of said County for any refund of such taxes which may be due Grantor for the period after City's acquisition.

i) ESCROW AGENT DIRECTIVES - Escrow Agent is authorized to, and shall:

- a) Pay and charge Grantor for any unpaid delinquent taxes and/or any penalties and interest thereon, and for any delinquent assessments or bonds against that portion of Grantor's property subject to this transaction as required to convey clear title.
- b) Pay and charge City for any escrow fees, charges and costs payable under Paragraph 2.C. of this Agreement;
- c) Disburse funds and deliver Deed when conditions of this escrow have been fulfilled by City and Grantor.
- d) Following recording of Deed from Grantor, if requested by City, provide City with a CLTA Standard Coverage Policy of Title Insurance in the amount of the compensation set forth in Paragraph 2.A. issued by a Title Company of City's choice showing that title to the Property is vested in City, subject only to the following exceptions, and the printed exceptions and stipulations in said policy:
 - 1) Real Property Taxes for the fiscal year in which escrow closes;
 - 2) Public utility easements and public rights of way;

- 3) Item Nos. 1-2, 4-11 and 13-14 of the preliminary title report issued by First American Title Company, dated August 29, 2019, referenced as Order No. 54075649475; and
- 4) Other items that may be approved in writing by City in advance of the close of escrow.

- ii) CLOSE OF ESCROW - The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is hereby authorized.

B. JUDGMENT IN LIEU OF DEED - In the event Grantor does not deliver title in a reasonable time under the terms of the Agreement, the City may file an action in eminent domain to pursue the acquisition of the Property, and this Agreement shall constitute a stipulation which may be filed in said proceedings as final and conclusive evidence of the total amount of damages for the taking, including all of the items listed in Section 1260.230 of the Code of Civil Procedure, regarding said property rights.

C. ARTICLE HEADINGS - Article headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

D. COMPLETE UNDERSTANDING - This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements or understandings, written or oral. This Agreement may not be amended except in writing by the parties hereto or their successors or assigns.

E. CITY COUNCIL APPROVAL - This Agreement represents Grantor's settlement proposal and is expressly subject to and contingent upon City's acceptance and approval. Deposit into escrow of a fully executed copy of this Agreement constitutes acceptance and approval by City. City shall not be bound to the terms and conditions herein unless and until this Agreement has been approved and ratified by the City Council and has been executed by the appropriate City official(s) acting in their authorized capacity.

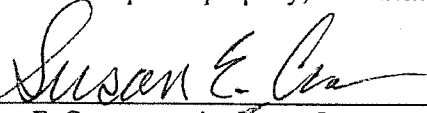
F. COUNTERPARTS - This Agreement may be executed in counterparts, each of which so executed shall irrespective of the date of its execution and delivery be deemed an original, and all such counterparts together shall constitute one and the same document.

G. ELECTRONIC AND FACSIMILE SIGNATURES - In the event that the parties hereto utilize electronic or facsimile documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing original signatures are provided following transmittal of the electronic or facsimile signature. Documents for recordation by the Clerk Recorder must contain original signatures.

No Obligation Other Than Those Set Forth Herein Will Be Recognized.


GRANTOR:

Susan E. Canvasser, as her sole and separate property, aka Susan Canvasser, a married woman as her sole and separate property, and Richard A. Tomlinson, as his sole and separate property



Susan E. Canvasser aka Susan Canvasser

Date: 4/16/20



Richard A. Tomlinson

Date: 4-16-20

GRANTOR'S MAILING ADDRESS:

Susan E. Canvasser and Richard A. Tomlinson
22813 N. Farmersville Boulevard
Farmersville, CA 93223

CITY OF FARMERSVILLE

By: _____
Gregorio Gomez, Mayor

Date: _____

MAILING ADDRESS OF CITY:

City of Farmersville
Department of Public Works
909 W. Visalia Road
Farmersville, CA 93223

ATTEST:

By: _____
Rochelle Giovani, City Clerk

Date: _____

Recording requested by:
Hamner, Jewell & Associates
Government Real Estate Services

When recorded, mail to:

City of Farmersville
Attn: City Clerk
909 W. Visalia Road
Farmersville, CA 93223

Exempt from the \$75 Building and Jobs Act Fee per Gov't Code §27388.1(2)(D) Public Agency
No fee pursuant to Government Code § 6103
No Documentary Transfer Tax per R&T Code § 11922
No Recording Fee per Government Code § 27383

GRANT DEED
(To the City of Farmersville)

APN: 128-210-037, 128-210-058

For a valuable consideration, receipt of which is hereby acknowledged,

Susan E. Canvasser, as her sole and separate property, aka Susan Canvasser, a married woman as her sole and separate property, and Richard A. Tomlinson, as his sole and separate property (hereinafter collectively referred to as "Grantor"),

hereby grants to the

The City of Farmersville, a municipal corporation (hereinafter referred to as "City"),
the following described interests in real property located in the City of Farmersville, County of Tulare, State of California:

In Fee:

All that certain property described in Exhibit A-1 and A-2 and depicted in Exhibit B-1 and B-2, attached hereto and incorporated herein; and

Temporary Construction Easement:

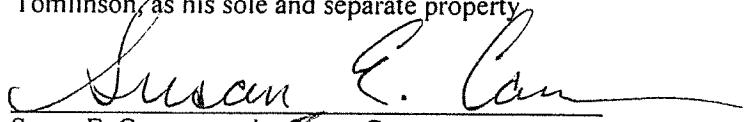
A temporary easement for construction and related purposes, in, on, over, under, along, through, and across those certain parcel(s) of land, described in Exhibits C-1 and C-2 and depicted in Exhibits D-1 and D-2, attached hereto and incorporated herein. Said Temporary Construction Easement shall commence thirty (30) days after issuance by City of a Notice of Commencement of Construction, which shall be issued to Grantor by U.S. Mail, and shall automatically terminate upon completion of construction, or one year after the commencement of construction, whichever occurs first. However, the City shall have the right to extend the Temporary

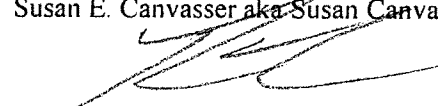
Construction Easement term in four (4) additional three (3) month increments if City determines that additional time beyond the one-year period is necessary for construction completion. In such case, City shall have the unilateral right to extend the Temporary Construction Easement period through construction completion and agrees to compensate Grantor \$302 for each three-month extension term exercised. Payment for any such extension(s) shall be paid by City to Grantor concurrent with City's written notice to Grantor of City's intent to exercise such extension provisions. In any event, this Temporary Construction Easement shall terminate on or before May 31, 2023. Upon termination, the Temporary Construction Easement area will be generally restored by City to a comparable or better condition as that which existed prior to City's access and use, except vegetation and any improvements acquired by City in this transaction.

Executed this 16th day of April, 2020.

GRANTOR:

Susan E. Canvasser, as her sole and separate property, aka Susan Canvasser, a married woman as her sole and separate property, and Richard A. Tomlinson, as his sole and separate property


Susan E. Canvasser aka Susan Canvasser


Richard A. Tomlinson

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

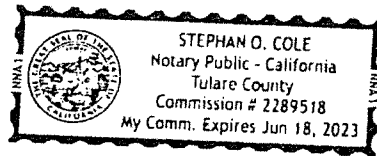
County of Tulare

On 16 April 2020 before me, Stephan O. Cole, Notary Public, personally appeared Susan E. Canvasser aka Susan Canvasser, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/~~they~~ executed the same in ~~his~~/~~her~~/~~their~~ authorized capacity(ies), and that by ~~his~~/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

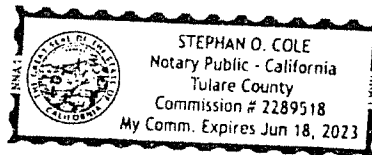
County of Tulare

On 16 April 2020 before me, Stephan O. Cole, Notary Public, personally appeared Richard A. Tomlinson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/~~they~~ executed the same in ~~his~~/~~her~~/~~their~~ authorized capacity(ies), and that by ~~his~~/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)



CERTIFICATE OF ACCEPTANCE

This is to certify that the City of Farmersville, a municipal corporation, hereby accepts for public purposes the real property, or interest therein, described in that Grant Deed dated _____, from Susan E. Canvasser, as her sole and separate property and Richard A. Tomlinson, as his sole and separate property, Grantor therein, to the City of Farmersville, City therein, and consents to the recordation thereof.

In Witness Whereof, I have hereunto set my hand this _____ day of _____, 20__.

CITY OF FARMERSVILLE

By _____
Gregorio Gomez, Mayor

ATTEST:

By _____
Rochelle Giovani, City Clerk

**EXHIBIT A-1
RIGHT OF WAY ACQUISITION**

All that certain real property situate in the City of Farmersville, County of Tulare, State of California, located in the Southeast quarter of Section 36, Township 18 South, Range 25 East, M.D.M. and being a portion of the real property described in the Gift Deed to Richard A. Tomlinson, recorded on January 30, 2003, at Document No. 2003-0008575, Tulare County Official Records, described as follows:

COMMENCING at the Southeast corner of said Southeast quarter of Section 36;
thence from said **POINT OF COMMENCEMENT** North 0°40'54" East along the East line of said Southeast quarter of Section 36, 226.00 feet;
thence North 89°11'51" West parallel with the South line of said Southeast quarter of Section 36, 40.00 feet to the Southeast corner of said Tomlinson Parcel (2003-0008575) and the **TRUE POINT OF BEGINNING**;
thence from said **TRUE POINT OF BEGINNING** North 89°11'51" West along the South line of said Tomlinson Parcel (2003-0008575) 9.98 feet;
thence North 1°43'24" East, 198.03 feet to a point on the North line of said Tomlinson Parcel (2003-0008575);
thence South 89°11'51" East along said North line, 6.38 feet to the Northeast corner of said Tomlinson Parcel (2003-0008575);
thence South 0°40'54" West, parallel with the East line of said Southeast quarter of Section 36, 198.00 feet to the **TRUE POINT OF BEGINNING**.

Containing an area of 1620 sq. ft. (0.037 acre) more or less

B R H

8-15-19

Brian R. Howard PLS 7250

Date



EXHIBIT B-1

PORTION OF SECTION 36, T. 18 S., R. 25 E., M.D.M.

Line Table		
Line #	Direction	Length
L1	N 0°40'54" E	226.00'
L2	N 89°11'51" W	40.00'

S 89°11'51" E
6.38'

RIGHT OF WAY
ACQUISITION
1620 SQ. FT.
(0.037 ACRE)

CANVASSER &
TOMLINSON
DOC. 2003-0008575
APN 128-210-037



B R H

8-15-19

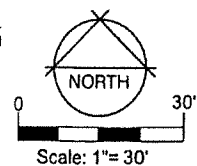
BRIAN R. HOWARD PLS 7250 DATE

N 89°11'51" W
9.98'

POINT OF COMMENCEMENT
SOUTHEAST CORNER OF
THE SOUTHEAST QUARTER
SECTION 36, T.18S., R.25E.
M.D.M.

FARMERSVILLE BLVD. RD 164

TRUE POINT
OF BEGINNING



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RIGHT OF WAY ACQUISITION

FARMERSVILLE, CALIFORNIA



GHD Inc.
330 Hartnell Avenue, Suite B
Redding, California 96002 USA
T 1 530 242 1700 W www.ghd.com

AUG. 14, 2019
1340LG002.dwg

EXHIBIT A-2
RIGHT OF WAY ACQUISITION

All that certain real property situate in the City of Farmersville, County of Tulare, State of California, located in the Southeast quarter of Section 36, Township 18 South, Range 25 East, M.D.M. and being a portion of the real property described in the Gift Deed to Richard A. Tomlinson, recorded on December 4, 2002, at Document No. 2002-0094644, Tulare County Official Records, described as follows:

COMMENCING at the Southeast corner of said Southeast quarter of Section 36;
thence from said **POINT OF COMMENCEMENT** North 0°40'54" East along the East line of said Southeast quarter of Section 36, 30.00 feet;
thence North 89°11'51" West parallel with the South line of said Southeast quarter of Section 36, 65.94 feet to the Southeast corner of said Tomlinson Parcel (2002-0094644);
thence North 0°48'09" East along the easterly line of said Tomlinson Parcel (2002-0094644), 12.00 feet;
thence South 89°11'51" East continuing along said easterly line, 3.32 feet to the **TRUE POINT OF BEGINNING**;
thence from said **TRUE POINT OF BEGINNING** North 46°03'37" East, 16.29 feet to a line parallel with and 11.00 feet West from the East line of said Tomlinson Parcel (2002-0094644);
thence North 0°40'54" East along said parallel line, 116.19 feet;
thence North 1°43'24" East leaving said parallel line, 56.34 feet to a point on the North line of said Tomlinson Parcel (2002-0094644);
thence along said North line South 89°11'51" East, 9.98 feet to the Northeast corner of said Tomlinson Parcel (2002-0094644);
thence South 0°40'54" West along the East line of said Tomlinson Parcel (2002-0094644), 165.70 feet;
thence North 89°18'57" West along the easterly line of said Tomlinson Parcel (2002-0094644), 2.00 feet;
thence South 45°44'36" West continuing along said easterly line, 25.84 feet;

thence North 89°11'51" West continuing along said easterly line, 2.31 feet to the **TRUE POINT OF BEGINNING.**

Containing an area of 1,858 square feet (0.043 acres) more or less.

B R H

8-15-19

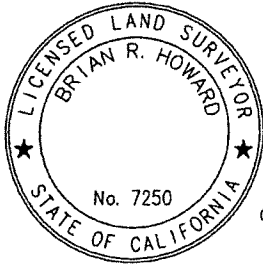
Brian R. Howard PLS 7250

Date



EXHIBIT B-2

PORTION OF SECTION 36, T. 18 S., R. 25 E., M.D.M.



B R H

8-15-19

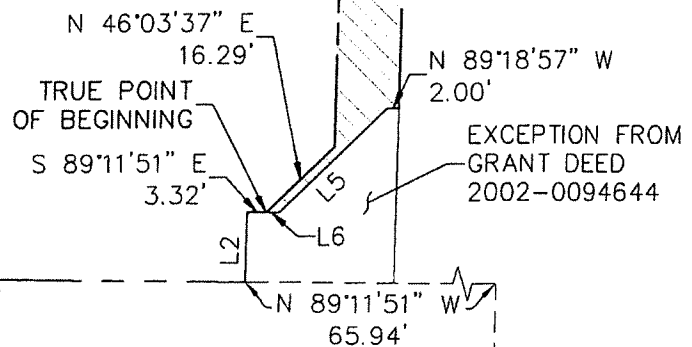
BRIAN R. HOWARD PLS 7250 DATE

RIGHT OF WAY
ACQUISITION
1858 SQ. FT.
(0.043 ACRE)

CANVASSER &
TOMLINSON
DOC. 2002-0094644
APN 128-210-058

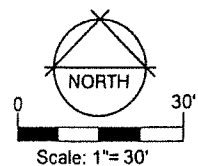
Line Table		
Line #	Direction	Length
L1	N 0°40'54" E	30.00'
L2	N 0°48'09" E	12.00'
L4	S 89°11'51" E	9.98'
L5	S 45°44'36" W	25.84'
L6	N 89°11'51" W	2.31'

FARMERSVILLE BLVD. RD 164



WALNUT AVE AVE 288

POINT OF COMMENCEMENT
SOUTHEAST CORNER OF
THE SOUTHEAST QUARTER
OF SECTION 36



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RIGHT OF WAY ACQUISITION

FARMERSVILLE, CALIFORNIA



GHD Inc.
330 Hartnell Avenue, Suite B
Redding, California 96002 USA
T 1 530 242 1700 W www.ghd.com

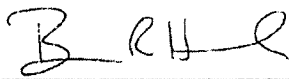
AUG. 14, 2019
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**EXHIBIT C-1
TEMPORARY CONSTRUCTION EASEMENT**

All that certain real property situate in the City of Farmersville, County of Tulare, State of California, located in the Southeast quarter of Section 36, Township 18 South, Range 25 East, M.D.M. and being a portion of the real property described in the Gift Deed to Richard A. Tomlinson, recorded on January 30, 2003, at Document No. 2003-0008575, Tulare County Official Records, described as follows:

COMMENCING at the Southeast corner of said Southeast quarter of Section 36;
thence from said **POINT OF COMMENCEMENT** North 0°40'54" East along the East line of said Southeast quarter of Section 36, 226.00 feet;
thence North 89°11'51" West parallel with the South line of said Southeast quarter of Section 36, 40.00 feet to the Southeast corner of said Tomlinson Parcel (2003-0008575);
thence North 89°11'51" West along the South line of said Tomlinson Parcel (2003-0008575) 9.98 feet to the **TRUE POINT OF BEGINNING**;
thence from said **TRUE POINT OF BEGINNING** North 89°11'51" West along said South line of said Tomlinson Parcel (2003-0008575) 6.00 feet;
thence North 1°43'24" East, 198.03 feet to a point on the North line of said Tomlinson Parcel (2003-0008575);
thence South 89°11'51" East along said North line, 6.00 feet;
thence South 1°43'24" West, 198.03 feet to the **TRUE POINT OF BEGINNING**.

Containing an area of 1188 sq. ft. (0.027 acre) more or less



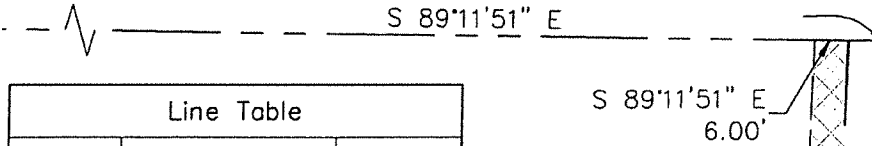
8-15-19

Brian R. Howard PLS 7250

Date



PORTION OF SECTION 36, T. 18 S., R. 25 E., M.D.M.



Line Table		
Line #	Direction	Length
L1	N 0°40'54" E	226.00'
L2	N 89°11'51" W	40.00'

TEMPORARY
CONSTRUCTION
EASEMENT
ACQUISITION
1188 SQ. FT.
(0.027 ACRE)

CANVASSER &
TOMLINSON
DOC. 2003-0008575
APN 128-210-037



B R H

8-15-19

BRIAN R. HOWARD PLS 7250 DATE

FARMERSVILLE BLVD. RD 164

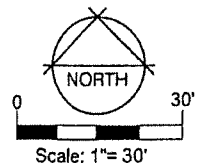
TRUE POINT
OF BEGINNING

N 89°11'51" W
9.98'

N 89°11'51" W
6.00'

N 89°11'51" W

POINT OF COMMENCEMENT
SOUTHEAST CORNER OF
THE SOUTHEAST QUARTER
SECTION 36, T.18S., R.25E.
M.D.M.



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TEMPORARY CONSTRUCTION EASEMENT

FARMERSVILLE, CALIFORNIA



GHD Inc.
330 Hartnell Avenue, Suite B
Redding, California 96002 USA
T 1 530 242 1700 W www.ghd.com

AUG. 14, 2019
1340LG002.dwg

EXHIBIT C-2
TEMPORARY CONSTRUCTION EASEMENT

All that certain real property situate in the City of Farmersville, County of Tulare, State of California, located in the Southeast quarter of Section 36, Township 18 South, Range 25 East, M.D.M. and being a portion of the real property described in the Gift Deed to Richard A. Tomlinson, recorded on December 4, 2002, at Document No. 2002-0094644, Tulare County Official Records, described as follows:

COMMENCING at the Southeast corner of said southeast quarter of Section 36;
thence from said **POINT OF COMMENCEMENT** North 0°40'54" East along the east line of said Southeast quarter of Section 36, 30.00 feet;
thence North 89°11 '51" West parallel with the South line of said Southeast quarter of Section 36, 65.94 feet to the Southeast corner of said Tomlinson Parcel (2002-0094644) and the **TRUE POINT OF BEGINNING**;
thence from said **TRUE POINT OF BEGINNING** continuing along said parallel line North 89°11 '51" West, 12.17 feet;
thence North 0°48'09" East, 6.51 feet;
thence North 46°03'37" East, 36.66 feet to a line parallel with and 1.00 foot West from the East line of said Tomlinson Parcel;
thence North 0°40'54" East along said parallel line, 75.93 feet;
thence North 9°38'40" West leaving said parallel line, 28.27 feet;
thence North 1°43'24" East, 59.96 feet to a point on the North line said Tomlinson Parcel (2002-0094644);
thence along said North line South 89°11 '51" East, 6.00 feet;
thence South 1°43'24" West, 56.34 feet;
thence South 0°40'54" West, 116.19 feet;
thence South 46°03'37" West, 16.29 feet to the easterly line of said Tomlinson Parcel (2002-0094644);

thence North 89°11'51" West along said easterly line, 3.32 feet;

thence South 0°48'09" West continuing along said easterly line, 12.00 feet to the
TRUE POINT OF BEGINNING.

Containing an area of 827 square feet (0.019 acre) more or less

B R H

8-15-19

Brian R. Howard PLS 7250

Date

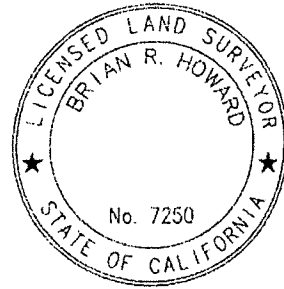
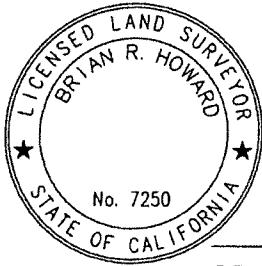


EXHIBIT D-2

PORTION OF SECTION 36, T. 18 S., R. 25 E., M.D.M.



B R H

TEMPORARY
CONSTRUCTION
EASEMENT
827 SQ. FT.
(0.019 ACRE)

8-15-19

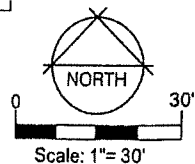
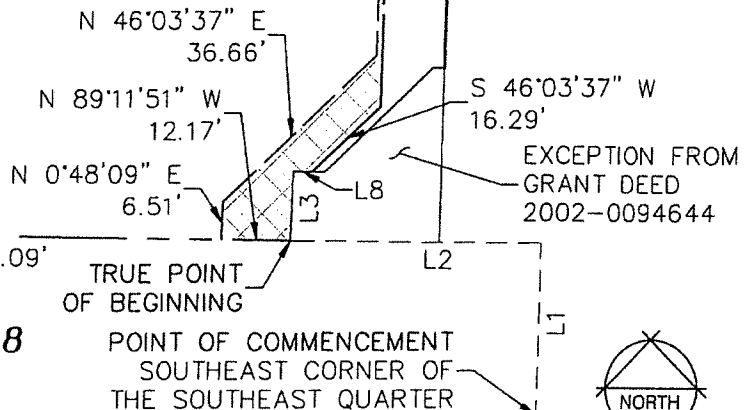
BRIAN R. HOWARD PLS 7250 DATE

Line Table		
Line #	Direction	Length
L1	N 0°40'54" E	30.00'
L2	S 89°11'51" E	65.94'
L3	S 0°48'09" W	12.00'
L5	N 1°43'24" E	59.96'
L6	S 89°11'51" E	6.00'
L7	S 1°43'24" W	56.34'
L8	N 89°11'51" W	3.32'

CANVASSER &
TOMLINSON
DOC. 2002-0094644
APN 128-210-058

FARMERSVILLE BLVD. RD 164

WALNUT AVE AVE 288



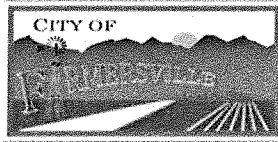
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FARMERSVILLE, CALIFORNIA



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AUG. 14, 2019
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City Council

Staff Report 7D

TO: Honorable Mayor and City Council

FROM: Jennifer Gomez, City Manager

DATE: April 27, 2020

SUBJECT: Authorization for Request for Proposal for design services for Farmersville Community Park Phase III – The Sequoia Gateway Area

RECOMMENDED ACTION:

It is respectfully recommended that the City Council authorize staff to create and publish a Request for Proposal for design services for Farmersville Community Park Phase III – The Sequoia Gateway Area.

BACKGROUND and DISCUSSION:

On May 13, 2019, the City Council authorized the application of a \$1,908,206.00 grant through the Cultural, Community, and Natural Resources Grant Program (Proposition 68) to complete the Farmersville Community Park Phase III – The Sequoia Gateway project. The grant was awarded, and the agreement with the State of California Natural Resources Agency was executed on January 14, 2020.

The project will develop a 0.5-acre portion of the City's 23-acre partially developed park site south of E. Walnut Avenue west of Freedom Drive. The project includes installing an amphitheater with terraced seating, picnic shelters, a playground, exercise equipment, and a pavilion for outdoor education.

In order to initiate this project, it is necessary that the City create and publish a Request for Proposals in order to select a consultant to conduct the needed architectural, landscaping, and engineering design services.

COORDINATION & REVIEW:

Staff has consulted with the Finance and Administration Department and Grant Consultants from Blais and Associates. This is the next step in the process of moving this project forward.

ALTERNATIVES:

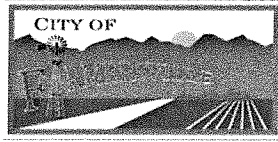
None at this time.

FISCAL IMPACT:

This project is being funding through the authority of the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018.

CONSLUSION:

It is respectfully recommended that the City Council authorize staff to create and publish a Request for Proposal for design services for Farmersville Community Park Phase III – The Sequoia Gateway Area.



City Council

Staff Report 7E

TO: Honorable Mayor and City Council

FROM: Jennifer Gomez, City Manager

DATE: April 27, 2020

SUBJECT: Contract with 4 Creeks for Construction Management & Resident Engineer Services for the East Walnut Avenue Improvements ATP Project in the amount of \$100,026

RECOMMENDED ACTION:

Recommend that the City Council approve contract with 4 Creeks for Construction Management & Resident Engineer Services for the East Walnut Avenue Improvements ATP Project in the amount of \$100,026.

BACKGROUND and DISCUSSION:

Request for Proposals were received from three companies (4 Creeks, Nv5, and SJ Construction Management) on April 8th and subsequently evaluated. Based on their scores, the City Manager determined 4 Creeks to be the most qualified and afterward reviewed their estimated fees. Following negotiations, an agreement was reached, and the attached contract is recommended for approval by the City Council.

4 Creeks will oversee the construction being performed by JT2 and will consult with QK for any changes or concerns regarding design. All parties involved are eager to begin this project with construction scheduled to begin mid-May and to be completed in August.

FISCAL IMPACT:

The engineer's estimate was \$100,000, and 4 Creek's fee estimate is \$100,026. The approved funding for this project was only \$85,000 for Construction Engineering, but the City will still be within the total budget, including construction.

ATTACHMENT(S):

Agreement

DRAFT AGREEMENT

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ARTICLE I INTRODUCTION

- A. This AGREEMENT is between the following named, hereinafter referred to as, CONSULTANT and the following named, hereinafter referred to as, LOCAL AGENCY:

The name of the "CONSULTANT" is as follows:

(NAME OF CONSULTANT)

Incorporated in the State of (NAME OF STATE)

The Project Manager for the "CONSULTANT" will be (NAME)

The name of the "LOCAL AGENCY" is as follows:

(NAME)

The Contract Administrator for LOCAL AGENCY will be (NAME)

- B. The work to be performed under this AGREEMENT is described in Article III Statement of Work and the approved CONSULTANT's Cost Proposal dated (DATE). The approved CONSULTANT's Cost Proposal is attached hereto (Attachment #) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this AGREEMENT, this AGREEMENT shall take precedence.
- C. CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless LOCAL AGENCY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of LOCAL AGENCY, as determined by a Court of competent jurisdiction. The provisions of this section shall survive termination or suspension of this AGREEMENT.
- D. CONSULTANT in the performance of this AGREEMENT, shall act in an independent capacity. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the Parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of City.
- E. LOCAL AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT, and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the LOCAL AGENCY as to the designation of tasks to be performed and the results to be accomplished.
- F. Any third party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds LOCAL AGENCY harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

- G. Except as expressly authorized herein, CONSULTANT's obligations under this AGREEMENT are not assignable or transferable, and CONSULTANT shall not subcontract any work, without the prior written approval of the Local AGENCY. However, claims for money due or which become due to CONSULTANT from City under this AGREEMENT may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the LOCAL AGENCY.
- H. CONSULTANT shall be as fully responsible to the LOCAL AGENCY for the negligent acts and omissions of its contractors and subcontractors or subconsultants, and of persons either directly or indirectly employed by them, in the same manner as persons directly employed by CONSULTANT.
- I. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- J. The consideration to be paid to CONSULTANT as provided herein, shall be in compensation for all of CONSULTANT's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

ARTICLE II CONSULTANT'S REPORTS OR MEETINGS

- A. CONSULTANT shall submit progress reports at least once a month. The report should be sufficiently detailed for the LOCAL AGENCY's Contract Administrator to determine, if CONSULTANT is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- B. CONSULTANT's Project Manager shall meet with LOCAL AGENCY's Contract Administrator, as needed, to discuss progress on the AGREEMENT.

ARTICLE III STATEMENT OF WORK

(Insert Appropriate Statement of work including a Description of the Deliverables) in the following sections. If a section does not apply to the AGREEMENT, state "Not Applicable to this AGREEMENT.")

- A. **CONSULTANT Services**
Detail based on the services to be furnished should be provided by CONSULTANT. Nature and extent should be verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. Reference to the appropriate standards for design or other standards for work performance stipulated in CONSULTANT AGREEMENT should be included. Describe acceptance criteria, and if the responsible CONSULTANT/engineer shall sign all Plans, Specifications and Estimate (PS&E) and engineering data furnished under the AGREEMENT including registration number.
- B. **Local Agency Obligations**
All data applicable to the project and in possession of LOCAL AGENCY, another agency, or government agency that are to be made available to CONSULTANT are referred to in the AGREEMENT. Any other assistance or services to be furnished to CONSULTANT are to be stated clearly.

- C. Conferences, Site Visits, Inspection of Work
This AGREEMENT provides for conferences as needed, visits to the site, and inspection of the work by representatives of the LOCAL AGENCY.. Costs incurred by CONSULTANT for meetings, subsequent to the initial meeting shall be included in the fee.
- D. CONSULTANT Services During Construction
The extent, if any of CONSULTANT's services during the course of construction as material testing, construction surveys. etc., are specified in the AGREEMENT together with the method of payment for such services.
- E. Documentation and Schedules
AGREEMENTs where appropriate, shall provide that CONSULTANT document the results of the work to the satisfaction of LOCAL AGENCY., This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the AGREEMENT objectives.
- F. Deliverables and Number of Copies
The number of copies or documents to be furnished, such as reports, construction files, or brochures shall be specified. Provision may be made for payment for additional copies.

ARTICLE IV PERFORMANCE PERIOD

A time must be set for beginning and ending the work under the AGREEMENT. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the AGREEMENT. If it is desirable that Critical Path Method (CPM) networks, or other types of schedules be prepared by CONSULTANT, they should be identified and incorporated into the AGREEMENT.

- A. This AGREEMENT shall go into effect on (DATE), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on (DATE), unless extended by AGREEMENT amendment.
- B. CONSULTANT is advised that any recommendation for AGREEMENT award is not binding on LOCAL AGENCY until the AGREEMENT is fully executed and approved by LOCAL AGENCY.

ARTICLE V ALLOWABLE COSTS AND PAYMENTS

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in the CONSULTANT's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this AGREEMENT. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed AGREEMENT.
- D. The AGREEMENT will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a LOCAL AGENCY Project

Coordinator. The AGREEMENT will be delivered to CONSULTANT for review. CONSULTANT shall return the AGREEMENT within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized AGREEMENT shall be signed by both LOCAL AGENCY and CONSULTANT.

- E. CONSULTANT shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.
- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. CONSULTANT will be responsible for transportation and subsistence costs in excess of State rates.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an AGREEMENT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Progress payments for the work will be made monthly in arrears based on services provided and actual costs incurred.
- I. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been approved by LOCAL AGENCY and notification to proceed has been issued by LOCAL AGENCY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this AGREEMENT.
- J. CONSULTANT will be reimbursed within thirty (30) days upon receipt by LOCAL AGENCY'S Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number, project title and Task Order number. Credits due LOCAL AGENCY that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by CONSULTANT prior to the expiration or termination of this AGREEMENT. Invoices shall be mailed to LOCAL AGENCY's Contract Administrator at the following address:

(NAME OF LOCAL AGENCY/ NAME OF CONTRACT ADMINISTRATOR)
(ADDRESS)

- K. The total amount payable by LOCAL AGENCY shall not exceed the amount agreed to in the AGREEMENT, unless authorized by amendment.
- L. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in an AGREEMENT, no payment will be made until the deliverable has been satisfactorily completed.
- M. The total amount payable by LOCAL AGENCY for all work resulting from this AGREEMENT shall not exceed \$ (Amount). It is understood and agreed that there is no

guarantee, either expressed or implied that this dollar amount will be authorized under this AGREEMENT.

ARTICLE VI TERMINATION

- A. This AGREEMENT may be terminated by LOCAL AGENCY, provided that LOCAL AGENCY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- B. LOCAL AGENCY may temporarily suspend this AGREEMENT, at no additional cost to LOCAL AGENCY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If LOCAL AGENCY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to LOCAL AGENCY for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, LOCAL AGENCY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

ARTICLE VII COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to LOCAL AGENCY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

ARTICLE VIII RETENTION OF RECORD/AUDITS

For the purpose of determining compliance with Gov. Code § 8546.7, the CONSULTANT, Subconsultants, and LOCAL AGENCY shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the AGREEMENT including, but not limited to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the AGREEMENT period and for three (3) years from the date of final payment under the AGREEMENT. LOCAL AGENCY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

ARTICLE IX AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by AGREEMENT, shall be reviewed by LOCAL AGENCY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, CONSULTANT may request a review by LOCAL AGENCY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by LOCAL AGENCY will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant AGREEMENTs, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an AGREEMENT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, LOCAL AGENCY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by LOCAL AGENCY Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by LOCAL AGENCY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, LOCAL AGENCY or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.
- E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole

discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved by the LOCAL AGENCY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

1. During IOAI's review of the ICR audit work papers created by the CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, LOCAL AGENCY will reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.
 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this AGREEMENT.
 4. CONSULTANT may submit to LOCAL AGENCY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this AGREEMENT has been completed to the satisfaction of LOCAL AGENCY; and, (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO LOCAL AGENCY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this AGREEMENT and all other agreements

executed between LOCAL AGENCY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

ARTICLE X SUBCONTRACTING

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between the LOCAL AGENCY and any Subconsultants, and no subagreement shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the LOCAL AGENCY for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an independent obligation from the LOCAL AGENCY's obligation to make payments to the CONSULTANT.
- B. The CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the LOCAL AGENCY Contract Administrator, except that which is expressly identified in the CONSULTANT's approved Cost Proposal.
- C. Any subagreement entered into as a result of this AGREEMENT, shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to Subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the CONSULTANT by the LOCAL AGENCY.
- E. Any substitution of Subconsultants must be approved in writing by the LOCAL AGENCY Contract Administrator in advance of assigning work to a substitute Subconsultant.

ARTICLE XI EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by LOCAL AGENCY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in CONSULTANT's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by LOCAL AGENCY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:
 - 1. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY

procedures; and credit LOCAL AGENCY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by LOCAL AGENCY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by LOCAL AGENCY.

2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

ARTICLE XII STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at LOCAL AGENCY construction sites, at LOCAL AGENCY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve LOCAL AGENCY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.
- D. Payroll Records
 1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by LOCAL AGENCY representative's at all reasonable hours at the principal office of the CONSULTANT.

The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:

- a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to LOCAL AGENCY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the LOCAL AGENCY Contract Administrator by both email and regular mail on the business day following receipt of the request.
3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by LOCAL AGENCY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
 5. The CONSULTANT shall inform LOCAL AGENCY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to LOCAL AGENCY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by LOCAL AGENCY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the LOCAL AGENCY Contract Administrator.
- F. Penalty
1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the LOCAL AGENCY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the

prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, LOCAL AGENCY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If LOCAL AGENCY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if LOCAL AGENCY did not retain

sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by LOCAL AGENCY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the LOCAL AGENCY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XIII CONFLICT OF INTEREST

- A. During the term of this AGREEMENT, the CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT or any ensuing LOCAL AGENCY construction project which will follow.
- B. CONSULTANT certifies that it has disclosed to LOCAL AGENCY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise LOCAL AGENCY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements of economic interest if required by either LOCAL AGENCY ordinance or State law.
- C. The CONSULTANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.

- D. The CONSULTANT hereby certifies that the CONSULTANT or subconsultant and any firm affiliated with the CONSULTANT or subconsultant that bids on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this AGREEMENT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

ARTICLE XIV REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any LOCAL AGENCY employee. For breach or violation of this warranty, LOCAL AGENCY shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the value of the work actually performed, or to deduct from this AGREEMENT price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

ARTICLE XV NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The CONSULTANT's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the CONSULTANT has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by LOCAL AGENCY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the LOCAL AGENCY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or LOCAL AGENCY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

ARTICLE XVI INSURANCE

- A. Prior to commencement of the work described herein, CONSULTANT shall furnish LOCAL AGENCY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for CONSULTANT with a combined single limit (CSL) of not less than one million dollars (\$2,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
 - 1. That the insurer will not cancel the insured's coverage without thirty (30) calendar days prior written notice to LOCAL AGENCY.
 - 2. That LOCAL AGENCY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this AGREEMENT are concerned.
 - 3. That LOCAL AGENCY will not be responsible for any premiums or assessments on the policy.
- C. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this AGREEMENT. In the event said insurance coverage expires at any time or times during the term of this AGREEMENT, CONSULTANT agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the AGREEMENT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of LOCAL AGENCY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, LOCAL AGENCY may, in addition to any other remedies it may have, terminate this AGREEMENT upon occurrence of such event.

ARTICLE XVII FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this AGREEMENT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after that determination was made.

- B. This AGREEMENT is valid and enforceable only if sufficient funds are made available to LOCAL AGENCY for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or LOCAL AGENCY governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. LOCAL AGENCY has the option to terminate the AGREEMENT pursuant to Article VI Termination, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XVIII CHANGE IN TERMS

- A. This AGREEMENT may be amended or modified only by mutual written agreement of the parties.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by LOCAL AGENCY's Contract Administrator.
- C. There shall be no change in CONSULTANT's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this AGREEMENT without prior written approval by LOCAL AGENCY's Contract Administrator.

ARTICLE XXI CONTINGENT FEE

CONSULTANT warrants, by execution of this AGREEMENT that no person or selling agency has been employed, or retained, to solicit or secure this AGREEMENT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, LOCAL AGENCY has the right to annul this AGREEMENT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXII DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by a committee consisting of LOCAL AGENCY's Contract Administrator and (Insert Department Head or Official), who may consider written or verbal information submitted by CONSULTANT.

- B. Not later than thirty (30) calendar days after completion of all work under the AGREEMENT, CONSULTANT may request review by LOCAL AGENCY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this AGREEMENT.

ARTICLE XXIII INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit LOCAL AGENCY, the State, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXIV SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by LOCAL AGENCY Safety Officer and other LOCAL AGENCY representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, LOCAL AGENCY has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

ARTICLE XXV OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.

- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. LOCAL AGENCY may permit copyrighting reports or other agreement products. If copyrights are permitted; the AGREEMENT shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

ARTICLE XXVI CLAIMS FILED BY LOCAL AGENCY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by LOCAL AGENCY's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with LOCAL AGENCY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that LOCAL AGENCY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from LOCAL AGENCY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with LOCAL AGENCY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXVII CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to LOCAL AGENCY's operations, which are designated confidential by LOCAL AGENCY and made available to CONSULTANT in order to carry out this AGREEMENT, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by LOCAL AGENCY relating to the AGREEMENT, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

- C. CONSULTANT shall not comment publicly to the press or any other media regarding the AGREEMENT or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff, CONSULTANT's own personnel involved in the performance of this AGREEMENT, at public hearings, or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this AGREEMENT without prior review of the contents thereof by LOCAL AGENCY, and receipt of LOCAL AGENCY'S written permission.

ARTICLE XXVIII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXIX EVALUATION OF CONSULTANT

CONSULTANT's performance will be evaluated by LOCAL AGENCY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the AGREEMENT record.

ARTICLE XXX RETENTION OF FUNDS

- A. The LOCAL AGENCY shall hold retainage from the CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by LOCAL AGENCY, of the AGREEMENT work, and pay retainage to CONSULTANT based on these acceptances. The CONSULTANT, or subconsultant, shall return all monies withheld in retention from a subconsultant within thirty (30) calendar days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the AGREEMENT work by the LOCAL AGENCY. Federal law (49 CFR §26.29) requires that any delay or postponement of payment over thirty (30) calendar days may take place only for good cause and with LOCAL AGENCY's prior written approval. Any violation of this provision shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Business and Professions Code §7108.5. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.

ARTICLE XXXI NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this AGREEMENT and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

CONSULTANT:

(CONSULTANT)

(NAME) _____, Project Manager

(ADDRESS)

LOCAL AGENCY:

(LOCAL AGENCY)

(NAME) _____, Contract Administrator

(ADDRESS)

ARTICLE XXXII CONTRACT

The two parties to this AGREEMENT, who are the before named CONSULTANT and the before named LOCAL AGENCY, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

ARTICLE XXXIII SIGNATURES

(Name of LOCAL AGENCY)

(Name of CONSULTANT)

(Signature)

(Name of Signer)

(Signature)

(Name of Signer)

Date: _____

Date: _____

Attachments:

Exhibit "A": Scope of Work

Exhibit "B": Project Fees

Exhibit "C": Schedule of Fees for Professional Services



City Council

Staff Report 8A

TO: Honorable Mayor and City Council

FROM: Mario Krstic, Chief of Police

DATE: April 27, 2020

SUBJECT: Authorize the City Manager to sign a purchase agreement with Smeal for the building of a Fire Engine for the City of Farmersville Fire Department

RECOMMENDED ACTION:

Authorize the City Manager to sign a purchase agreement with Smeal for the building of a Fire Engine for the Farmersville Fire Department

BACKGROUND:

The Farmersville Fire Department has had a previously approved Capital Improvement Project (CIP) for the purchase of a Fire Truck for the 20/21 fiscal year. Since that time the Fire Department, after a thorough evaluation of capabilities and needs, has modified the CIP request to be a Fire Engine as opposed to a Truck however, the cost remains as already described and approved in the existing CIP. This modified CIP Project was approved and adopted by Council earlier this year. The Engine would come with all related emergency, communications, and firefighting equipment making it ready to be put into service upon delivery. This is a project that is part of Council's Vision and Goals of supporting public safety in the community and as stated earlier is an approved CIP project.

The Farmersville Fire Department has 6 apparatus in its fleet all of which are aging pieces of equipment. The year and mileage of the equipment are as follows;

Truck 83 – 1990 Ottawa Beck – 52,222 miles

Utility 83 – 2000 Ford F150 – 114,003 miles

Engine 83 – 2002 Freightliner FL-70 – 50,402 miles

Chief 83 – 2007 Chevy 1500 – 117,186 Miles

Squad 83 – 2008 GMC 3500 – 59,197 miles

Patrol 83 – 2014 Dodge Ram 4500 – 36,017 miles

The Farmersville Fire Department has done a commendable job keeping its aging fleet serviceable and in operation however that is coming at an increasingly higher cost and the reliability of the aging apparatus has already come into question over the past few years. The Department's newest piece of apparatus, Patrol 83, is now six (6) years old. The specific apparatus that would be going out-of-service and be removed from the fleet is the 1990 Ottawa Beck Truck. This is a (30) thirty-year-old vehicle that has long since reached the end of its useful life but has been kept in service at great expense and what could be characterized as heroic efforts on the part of Farmersville Fire Department staff. Staff would then move the 2002 Freightliner Engine, a nearly (20) twenty-year-old vehicle, from front line service into a backup capacity and the new Engine would assume the role of one of our three "first out" apparatus.

DISCUSSION:

The specific Fire Engine the Department seeks to purchase is based on the Chino Valley "build". Chino Valley has seven engines like the one being sought by the Farmersville Fire Department and it most closely matches the specifications that our build committee felt would best suit our needs and the needs of our community. Smeal is the manufacturer of this specific "build" that was chosen by the design committee. Although there are several vendors for fire apparatus, selection of a "build" that most closely matches the specific needs of the community is essential. Our needs are further complicated by the limited space in both the parking lot, drive approaches, and apparatus bays at the station. Under a Cooperative Contract we can sole source from Smeal as no other manufacturer has this specific hybrid design of a Type 1/Wildland Urban Interface design. The approach/departure angle of this specific design and the steering angles make ingress/egress much easier. This is necessary given the tight space available at our current facility and in many of the neighborhoods in our community. This design will also better suit the combination of urban and rural/wildland firefighting activities that we most commonly engage in. Other manufacturers are imitating this but are not able to duplicate it due to certain existing patents. Ultimately, for a proven, dual-purpose build that would best suit the needs of the department and the community, Smeal is the manufacturer to go with. The design committee has worked to ensure that the pricing offered is competitive and is in line with what other entities purchasing similar apparatus have paid.

It is important to note that this apparatus will also give the Fire Department additional "out of county" mutual aid response capabilities which are a revenue generator for the City. These funds, although not guaranteed, could be used to offset the cost of the apparatus.

Time is of the essence in signing a purchase agreement with Smeal. Beginning May 1st, 2020 as there will be a price increase of 5% on all apparatus sold after that date in light of the current COVID-19 crisis and supply chain issues. Although we would not take delivery of the engine until late in fiscal year ending 21 or early year ending 22 the 5% would translate into an \$80,000 increase for the same engine and equipment. Staff feels that the ability to save \$80,000 on this purchase is firmly in the public interest. Furthermore, delaying the purchase to a later model year would undoubtedly result in higher cost well beyond the \$80,000 and likely into a six-figure increase to the cost.

COORDINATION & REVIEW:

This item has been reviewed by the City Manager and an attached memo requesting support to move forward with the signing of the purchase agreement has been signed onto by the City Manager. Providing Public Safety, including fire protection, is one of City Council's stated Vision and Goals. The purchase of this apparatus is consistent with achieving and maintaining that vision and those goals. As mentioned earlier in this report, this is a previously Council approved CIP.

ALTERNATIVES: None recommended at this time.

FISCAL IMPACT:

As outlined in the CIP project report this purchase would be financed over a period of time spreading payments over several years beginning the fiscal year in which the equipment is delivered. It is anticipated that this would be in the last quarter of the 20/21 fiscal year or more likely in the first quarter of the 21/22 fiscal year meaning no impact to the current budget and most likely no impact to the next fiscal year's budget.

CONCLUSION:

Staff recommends that Council authorize the City Manager to sign a purchase agreement with Smeal for the manufacturing and delivery of a Fire Engine for the City of Farmersville Fire Department (This is a previously Council approved CIP)

ATTACHMENT(S):

Purchase Agreement

Memo to the City Manager from the Chief of Police

Memo

To: Jennifer Gomez, City Manager

From: Mario Krstic, Chief of Police

Date: 4/23/2020

Re: Request support for seeking authorization for the Signing of a Purchase Agreement for the previously approved Fire Engine Capitol Improvement Project

The Farmersville Fire Department has a Council approved Capitol Improvement Project (CIP) for the purchase of Fire Truck for the 20/21 fiscal year. Since that time the Fire Department, after a thorough evaluation of capabilities and needs, has modified the request to be a Fire Engine as opposed to a Truck however the cost remains as already described and approved in the existing CIP and was part of the recent Council approved CIP Updates. The Engine would come with all related emergency, communications, and firefighting equipment making it ready to be used upon delivery. This is a project that is part of Councils Vision and Goals of supporting public safety in the community and as stated earlier is a Council approved CIP project.

The specific Fire Engine is based on the Chino Valley "build". Chino Valley has seven engines like the one being sought by Farmersville Fire and it most closely matches the specifications that our build committee felt would suit our needs the best. Although there are several vendors for fire apparatus, selection of a "build" that most closely matches the specific needs of the community are essential. Due to our current facilities size we have limited apparatus bay space and tight turn requirements. Smeal is the manufacturer that has been chosen by the design committee. Under a Cooperative Contract we can sole source from Smeal as no one else has the specific hybrid type of Type 1/Wildland Urban Interface design. The approach/departure angle of this specific design and the steering angles make ingress/egress much easier. This is necessary given the tight space available at our current facility and this also better suits the combination of urban and rural/wildland firefighting activities that our Fire Department most commonly engages in. Other manufacturers are imitating this but are not able to duplicate it due to certain existing patents. Ultimately, for a proven, dual-purpose hybrid build, Smeal is the manufacturer to go with. The design committee has ensured that the pricing offered is competitive and is in line with what other entities having purchased similar apparatus have paid.

It is important to note that this apparatus will also give the Department additional "out of county" mutual aid response capabilities which have been a revenue generator for

the City in the past. These funds, although not guaranteed, could be used to offset the cost of the apparatus in the future.

Time is of the essence in signing a purchase agreement with Smeal. Beginning May 1st there will be a price increase of 5% on all apparatus sold. This increase is in light of the current COVID-19 crisis which is resulting in supply chain issues. Although we would not take delivery of the engine until late in fiscal year ending 21 or early year ending 22 the 5% increase translates into an \$80,000 price increase for the same engine and equipment. Staff feels that the ability to save \$80,000 on this purchase is in firmly in the public interest. It is also important to consider that purchasing of a later model year would add additional cost to the purchase well over the \$80,000 and likely well into six figures. Staff recommends that this be taken to City Council to seek authorization for the City Manager to sign a purchase agreement with Smeal securing currently offered pricing, and saving the City \$80,000 in increases that will be imposed due to the COVID-19 crisis.

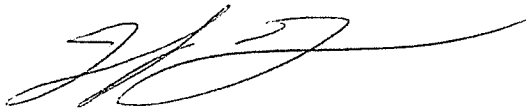
It is important to note that the plan is to finance this purchase, that no funds would be expended in the current fiscal year, and that funds would likely not be expended until the fiscal year ending 22. The build time is estimated at 365 days from time of final order and anticipating production delays that frequently occur would mean delivery in the fiscal year ending 22. Again, this is a currently Council approved CIP for the Fire Department and is in line with Councils Goals and Vision for the City.

Staff is seeking your support of making a formal request to the City Council at the April 27, 2020 Council meeting authorizing the signing of the purchase agreement.

Respectfully submitted,

Mario Krstic, Chief of Police, the Members of the Design Committee, and all the Firefighters of the Farmersville Fire Department

Recommended Approval

A handwritten signature in black ink, appearing to be 'MK', written over a horizontal line.



Battalion Chief Jim Thomas
Farmersville Volunteer Fire Department
909 West Visalia Road
Farmersville, California 93223

April 24, 2020

RE: Offer to Provide One (1) 2021 Spartan Emergency Response Type 1 Engine(s)

Attention: Battalion Chief Jim Thomas

On behalf of Emergency Vehicle Group, Inc., I would like to thank you for the opportunity to provide you with the following offer for Farmersville Volunteer Fire Department to purchase One (1) 2021 Spartan Emergency Response Type 1 Engine(s) on a Spartan Metro Star, 4 x 2, Diesel Powered MFD 10" Raised Roof Chassis.

Emergency Vehicle Group, Inc. (EVG) is proud to be in the business of serving those who bravely serve our communities and help ensure the safety of our families and friends. Our pledge is to offer you the same quality of service and expertise that is demanded from you. Over the years we have introduced fire departments, municipalities and private companies to the absolute best in service, sales and support for emergency vehicle products.

We proudly serve California, Arizona and Nevada and offer you premium custom products along with the best value available in the industry. EVG accomplishes this by representing Spartan Emergency Response, SMEAL Fire Apparatus, Ladder Tower, SVI Trucks, Unruh Fire, Wheeled Coach Ambulance and Road Rescue Ambulance as well as offering ambulance remount services and command vehicles built by EVG.

EVG employs EVT and ASE Certified Mechanics with decades of experience in servicing emergency vehicles, fire apparatus and ambulances. EVG recognizes the importance of these vehicles as a life saving device and take great pride in serving those that bravely serve and protect us. Our corporate office and service facility is located in Anaheim, CA.

Our mission is to develop long-term relationships and provide our customers with "honest, intelligent effort" in everything we do for you. We are committed to do whatever it takes to surpass customers' expectations by continually improving upon what we do.

All of us at Emergency Vehicle Group, Inc. believe in long-term relationships and we look forward to the opportunity of working with you and Farmersville Volunteer Fire Department. I would again like to thank you for the opportunity. Everyone at EVG offers you our sincere pledge of "Honest, Intelligent Effort" in everything we do for you now, and in the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Grinstead', is written over a horizontal line.

Travis Grinstead
President & CEO



PROPOSAL

Battalion Chief Jim Thomas
Farmersville Volunteer Fire Department
909 West Visalia Road
Farmersville, California 93223

April 24, 2020

The undersigned is prepared to provide for the Farmersville Volunteer Fire Department, upon receipt of a valid purchase order or a fully executed contract for final acceptance by Emergency Vehicle Group, the apparatus and equipment herein named and for the following prices:

Description	Price Each	Extended Price
One (1) 2021 Spartan Emergency Response Type 1 Engine(s) on a Spartan Metro Star, 4 x 2, Diesel Powered MFD 10" Raised Roof Chassis	\$601,257.00	\$601,257.00
California Sales Tax (Based on Rate of 7.75%)	\$46,597.42	\$46,597.42
Tire Fee	\$10.50	\$10.50
Document Fee	\$80.00	\$80.00
Total Purchase Price	\$647,944.92	\$647,944.92


Said apparatus and/or equipment to be built and shipped in accordance with the specifications/work order reference number 01312-S8Y4K3 and any associated drawing(s) as provided. The specifications/work order/drawings herein contained will form a part of the final contract and are subject to changes desired by the purchaser, provided such alterations are interlined prior to the acceptance by Emergency Vehicle Group, Inc. of the purchase order or executed contract, and provided such alterations do not materially affect the cost of the construction of the apparatus.

The apparatus and/or equipment will be ready for delivery approximately 395 days after receipt of valid purchase order or executed contract, not including chassis and materials delays, or other causes beyond our control.

The proposal for apparatus conforms with all Federal Department of Transportation (DOT) rules and regulations in effect at the time of the proposal, and with all applicable guidelines for Emergency Apparatus as published at time of the proposal, except as modified by the referenced specifications. Any increased costs incurred by the seller because of future changes in or additions to said standards will be passed along to the customer as an addition to the price set forth above.

Unless accepted within 10 days from date of proposal (listed above), the right is reserved to withdraw this proposition.

Respectfully Submitted,


Travis Grinstead
President & CEO

Purchase Agreement

This Purchase Agreement (together with all attachments referenced herein, the "Agreement"), made and entered into by and between Emergency Vehicle Group, Inc, a Nevada corporation ("EVG"), and Farmersville Volunteer Fire Department ("Customer") is effective as of the date specified in Section 3 hereof.

1. Definitions.

- a. "Product" means the apparatus and any associated equipment manufactured or furnished for the Customer by EVG pursuant to the Specifications
- b. "Specifications" means the general specifications, technical specifications, training, and testing requirements for the Product contained in the EVG Proposal for the Product
- c. "EVG Proposal" means the proposal provided by EVG attached as an attachment prepared in response to the Customer's request
- d. "Delivery" means the date EVG is prepared to make physical possession of the Product available to the Customer
- e. "Acceptance" The Customer shall have fifteen (15) calendar days of Delivery to inspect the Product for substantial conformance with the material Specifications; unless EVG receives a Notice of Defect within fifteen (15) calendar days of Delivery, the Product will be deemed to be in conformance with the Specifications and accepted by the Customer

2. Purpose. This Agreement sets forth the terms and conditions of EVG's sale of the Product to the Customer.

3. Term of Agreement. This Agreement will become effective on the date it is signed and approved by EVG's authorized representative pursuant to Section 22 hereof ("Effective Date") and, unless earlier terminated pursuant to the terms of this Agreement, it will terminate upon the Customer's Acceptance and payment in full of the Purchase Price.

4. Purchase and Payment. The Customer agrees to purchase the Product specified for the total purchase price of Six Hundred Forty Seven Thousand Nine Hundred Forty Four Dollars and Ninety One Cents (\$647,944.92) ("Purchase Price"). Prices are in U.S. funds.

5. Future Changes. Various state or federal regulatory agencies (e.g. NFPA, KKK, DOT, EPA) may require changes to the Specifications and/or the Product and in any such event any resulting cost increases incurred to comply there with will be added to the Purchase Price to be paid by the Customer. In addition, any future drive train upgrades (engine, transmission, axles, etc.), or any other specification changes have not been calculated into our annual increases and will be provided at additional cost. To the extent practicable, EVG will document and itemize any such price increases for the Customer.

6. Agreement Changes. The Customer may request that EVG incorporate a change to the Products or the Specifications for the Products by delivering a change order to EVG; provided, however, that any such change order must be in writing and include a description of the proposed change sufficient to permit EVG to evaluate the feasibility of such change ("Change Order"). Within [seven (7) business days of receipt of a Change Order, EVG will inform the Customer in writing of the feasibility of the Change Order, the earliest possible implementation date for the Change Order, of any increase or decrease in the Purchase Price resulting from such Change Order, and of any effect on production scheduling or Delivery resulting from such Change Order. EVG shall not be liable to the Customer for any delay in performance or Delivery arising from any such Change Order. A Change Order is only effective when counter-signed by EVG's authorized representative.

7. Cancellation/Termination. In the event this Agreement is cancelled or terminated by a party before completion, EVG may charge a cancellation fee. The following charge schedule based on costs incurred may be applied: (a) 10% of the Purchase Price after order is accepted and entered by EVG; (b) 20% of the Purchase Price after completion of approval drawings, and; (c) 30% of the Purchase Price upon any material requisition. The cancellation fee will increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing. EVG endeavors to mitigate any such costs through the sale of such Product to another purchaser; however Customer shall remain liable for the difference between the Purchase Price and, if applicable, the sale price obtained by EVG upon sale of the Product to another purchaser, plus any costs incurred by EVG to conduct any such sale.

8. Delivery, Inspection and Acceptance. (a) Delivery. Delivery of the Product is scheduled to be within 395 days of the Effective Date of this Agreement, F.O.B. Farmersville California. Risk of loss shall pass to Customer upon Delivery. (b) Inspection and Acceptance. Upon Delivery, Customer shall have fifteen (15) days within which to inspect the Product for substantial conformance to the material Specifications, and in the event of substantial non-conformance to the material Specifications to furnish EVG with written notice sufficient to permit EVG to evaluate such non-conformance ("Notice of Defect"). Any Product not in substantial conformance to material Specifications shall be remedied by EVG within thirty (30) days from the Notice of Defect. In the event EVG does not receive a Notice of Defect within fifteen (15) days of Delivery, Product will be deemed to be in conformance with Specifications and Accepted by Customer.

9. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

Emergency Vehicle Group, Inc.
2883 East Coronado Street
Anaheim, CA 92806

Farmersville Volunteer Fire Department
909 West Visalia Road
Farmersville, California 93223

10. Standard Warranty. Any applicable warranties are attached hereto and made a part hereof. Any additional warranties must be expressly approved in writing by EVG's authorized representative.

- a. Disclaimer. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER EVG, ITS AUTHORIZED MANUFACTURERS, AFFILIATES, SUBSIDIARIES, LICENSORS OR SUPPLIERS, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES, MAKE ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PRODUCTS PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED. STATEMENTS MADE BY SALES REPRESENTATIVES OR IN PROMOTIONAL MATERIALS DO NOT CONSTITUTE WARRANTIES.
- b. Exclusions of Incidental and Consequential Damages. In no event shall EVG be liable for consequential, incidental or punitive damages incurred by Customer or any third party in connection with any matter arising out of or relating to this Agreement, or the breach thereof, regardless of whether such damages arise out of breach of warranty, tort, contract, strict liability,



11. Insurance. EVG maintains the following limits of insurance with a carrier(s) rated A- or better by AM. Best:

Commercial General Liability Insurance:

Products/Completed Operations Aggregate: \$1,000,000

Each Occurrence: \$1,000,000

Umbrella/Excess Liability Insurance:

Aggregate: \$2,000,000

Each Occurrence: \$2,000,000

The Customer may request: (x) EVG to provide the Customer with a copy of a current Certificate of Insurance with the coverages listed above; (y) to be included as an additional insured for Commercial General Liability (subject to the terms and conditions of the applicable EVG insurance policy); and (z) all policies to provide a 30 day notice of cancellation to the named insured

12. Indemnity. The Customer shall indemnify, defend and hold harmless EVG, its officers, employees, manufacturers, agents or subcontractors, from any and all claims, costs, judgments, liability, loss, damage, attorneys' fees or expenses of any kind or nature whatsoever (including, but without limitation, personal injury and death) to all property and persons caused by, resulting from, arising out of or occurring in connection with the Customer's purchase, installation or use of goods sold or supplied by EVG which are not caused by the sole negligence of EVG.

13. Force Majeure. EVG shall not be responsible nor deemed to be in default on account of delays in performance due to causes which are beyond EVG's control which make EVG's performance impracticable, including but not limited to civil wars, insurrections, strikes, riots, fires, storms, floods, other acts of nature, explosions, earthquakes, accidents, any act of government, delays in transportation, inability to obtain necessary labor supplies or manufacturing facilities, allocation regulations or orders affecting materials, equipment, facilities or completed products, failure to obtain any required license or certificates, acts of God or the public enemy or terrorism, failure of transportation, epidemics, quarantine restrictions, failure of vendors (due to causes similar to those within the scope of this clause) to perform their contracts or labor troubles causing cessation, slowdown, or interruption of work.

14. Default. True occurrence of one or more of the following shall constitute a default under this Agreement: (a) the Customer fails to pay when due any amounts under this Agreement or to perform any of its obligations under this Agreement; (b) EVG fails to perform any of its obligations under this Agreement; (c) either party becomes insolvent or become subject to a bankruptcy or insolvency proceedings; (d) any representation made by either party to induce the other to enter into this Agreement is false in any material respect; (e) the Customer dissolves, merges, consolidates or transfers a substantial portion of its property to another entity; or (f) the Customer is in default or has breached any other contract or agreement with EVG.

15. Manufacturer's Statement of Origin. It is agreed that the manufacturer's statement of origin ("MSO") for the Product covered by this Agreement shall remain in the possession of EVG until the entire Purchase Price has been paid. If more than one Product is covered by this Agreement, then the MSO for each individual Product shall remain in the possession of EVG until the Purchase Price for that Product has been paid in full. In case of any default in payment, EVG may take full possession of the Product, and any payments that have been made shall be applied as payment for the use of the Product up to the date of taking possession.

16. Independent Contractors. The relationship of the parties established under this Agreement is that of independent contractors and



Purchase Agreement for Emergency Apparatus (continued)

17. Assignment. Neither party may assign its rights and obligations under this Agreement unless it has obtained the prior written approval of the other party.

18. Governing Law; Jurisdiction. Without regard to any conflict of laws provisions, this Agreement is to be governed by and under the laws of the state of California.

19. Facsimile Signatures. The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.

20. Entire Agreement. This Agreement shall be the exclusive agreement between the parties for the Product. Additional or different terms proposed by the Customer shall not be applicable, unless accepted in writing by EVG's authorized representative. No change in, modification of, or revision of this Agreement shall be valid unless in writing and signed by EVG's authorized representative.

21. Conflict. In the event of a conflict between the Customer Specifications and the EVG Proposal, the EVG Proposal shall control. In the event there is a conflict between the EVG Proposal and this Agreement, the EVG Proposal shall control.

22. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by EVG Manufacturing, Inc.'s authorized representative.


Farmersville Volunteer Fire Department:

Signature Date

Printed Name

Title

Emergency Vehicle Group:

 4/24/2020

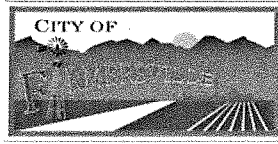
Signature Date

Travis Grinstead

Printed Name

President & CEO

Title



City Council

Staff Report 8B

TO: Honorable Mayor and City Council

FROM: Jennifer Gomez, City Manager

DATE: April 27, 2020

SUBJECT: Tulare County Economic Development Corporation Membership

RECOMMENDED ACTION:

Staff recommends that the City terminate its membership effective July 1, 2020.

BACKGROUND and DISCUSSION:

The City of Farmersville has been members of the Tulare County Economic Development Corporation since its formation in 1983. However, there have been concerns over the years as to the benefits received from this relationship by our City Council members as well as elected officials from other cities. Due to growing concerns by most stakeholders, a meeting was held back on August 23, 2018 in which EDC facilitated a strategic planning session for the stakeholders to voice priorities.

The two main priorities that were identified were 1) Performance Metrics and 2) Communication + Trust. Through this exercise it became clear that tailoring individual city needs and tying them to performance measures became the common theme. Participants at the meeting also identified actions that the cities would like EDC to do, such as conducting a SWOT (Strengths, Weaknesses, Opportunities, Threats) Analysis to enlighten elected officials and staff on where improvements need to be made to be more competitive and to improve their market; and the cities would like EDC to provide reports and feedback to demonstrate the efforts taken by them to give us leads, and why we are not being successful at landing them.

To improve communication and trust, there were to be expectations identified on both the EDC side as well as on the public agency side to be better engaged and responsive to each other. Creating a memorandum of understanding or a similar type of document would communicate the goals and priorities of the City, and also establish measures to show a return on investment.

Based on the strategic planning session, it appeared that the EDC would be making changes to bring about a stronger relationship with each city based on their individual needs. Many of the smaller cities specifically requested economic development be more focused on retailers instead of industrial users.

However, over the last two years, the EDC has not followed through on making efforts to perform for the City of Farmersville. A SWOT analysis was not provided and there has been no communication regarding feedback from potential leads. Also, no document was ever created by the EDC identifying the priorities for Farmersville. There have been no reports provided to the City showing any action taken to bring any developers here. In 2019, EDC staff coordinated with the City Manager to reserve a booth at the ICSC conference in Los Angeles, however, there was a lot of miscommunication in that process and ultimately making the reservation was the only action EDC did, which could have been done directly by the City.

Now, at their April 22, 2020 Board meeting a staff report was prepared with the recommendation to take away the Board seats for Farmersville, Woodlake, Exeter, and Lindsay since we contribute less than \$10,000 a year to their budget. Instead, one seat would rotate between the four cities each year. They asked that each of these cities still contribute financially, but not have a vote like the County, Dinuba, Porterville, Tulare, and Visalia. This was a solution to appease the County, but during the meeting all of the cities sounded united in their displeasure at this proposal. Additional discussion was also held regarding the seats held by the private sector and their financial contributions. EDC indicated that the goal is to completely privatize in a couple of years when they are financially able to do so. Ultimately, the agenda item was tabled to continue discussions regarding the dues formula and solutions to satisfy all agencies.

This dispute over dues, equity, and return on investment has been ongoing for several years. Their promise of reports and presentations for the City of Farmersville has not materialized. EDC has not listened to the needs of Farmersville for years and their recommendation to remove the City representative from the Board is another indication that they have no intention of making Farmersville a priority in bringing economic development to our community. Our financial contribution may be small, but we should still have a voice. Even if the Board structure remains as is, City staff believes it is time to hold EDC accountable for their lack of performance and lack of effort that goes back numerous years.

ALTERNATIVES:

The payment of \$3,168 to EDC is included in next year's budget under the account for Membership Legislation, but could alternatively be used by staff to further economic development through internal efforts instead. It is Council's discretion to direct the use of these funds whether it is to fund the EDC; or not fund the EDC and reduce the budget in this account and increase the budget for Economic Development; or not fund the EDC and reduce the overall budget.

FISCAL IMPACT:

Membership for Fiscal Year 2020-2021 is \$3,168. This will increase if other agencies withdraw from EDC, and their contributions would be shared among the remaining members. These potential increases could not be supported by our budget.

ATTACHMENT(S):

Tulare County Economic Development Corporation Agenda Report dated April 22, 2020



TULARE COUNTY ECONOMIC DEVELOPMENT CORPORATION

Agenda Report – April 22, 2020

Governance & Fiscal Policy CHnages

Recommendation

The Administrative Committee recommends the Board of Directors:

1. Modify the bylaws to reflect 6 public sector Board members, with 5 members to be nominated by their respective entities and elected by the Board and the 6th member to be selected based on meeting attendance for the current fiscal year and thereafter rotating among the jurisdictions.
2. Approve policy that any shortage of public sector contribution be distributed among the remaining members on the basis of the contribution formula and/or result in budget reductions.

Background

On January 22, 2020 the Board of Directors approved the public sector contribution formula for the 2020-21 fiscal year. The following table shows the approved contribution level and percent of total.

Dinuba	7.06%	\$	16,075
Exeter	1.63%	\$	3,718
Farmersville	1.39%	\$	3,168
Lindsay	1.74%	\$	3,967
Porterville	8.91%	\$	20,290
Tulare	11.22%	\$	25,538
Visalia	27.20%	\$	61,941
Woodlake	1.01%	\$	2,298
Unincorporated	39.84%	\$	90,712

The issue of equity with regard to public sector contributions and representation on the Board has been expressed by the County with respect to the increase of public sector contributions. Members of the Admin Committee have met with the County to discuss the background regarding the public sector contribution. The Admin Committee met on March 27 and on April 13 to discuss several options and considerations regarding public sector contributions and governance representation. Likewise, the Admin Committee is concerned with the potential impact to the lack of reserves to sustain the budget if one or more public sector members decline to make their allocated contribution. As such, the Admin Committee is recommending proposed changes to the governance structure and reserve policy commensurate with the new public sector contribution formula.

Governance



TULARE COUNTY ECONOMIC DEVELOPMENT CORPORATION

Agenda Report – April 22, 2020

The planned contribution formula allocates approximately 40% of the budget to the County of Tulare, with the cities contributing 60%. Under the current governance structure, the County represents 11% of the public sector membership and the cities represent 89%. For comparative purposes, TCAG receives 30% of the budget from the County and accounts for 38% of the public sector members, while the cities contribute 70% of the budget and account for 62% of the public sector members. While the Admin Committee recognizes that the equity disparity with respect to the budget and governance structure, the committee proposes a hybrid structure that does not add to the EDC Board, but rather reduces its size. Therefore, the following structure is recommended:

- All public sector contributors over the amount of \$10,000 may nominate an elected official to serve on the EDC Board. The County, Dinuba, Porterville, Tulare and Visalia would have a Board seat.
- For public sector contributors under \$10,000, the seat shall rotate annually among the members and the rotation shall be based on the attendance level for the current fiscal year. The next city in line would serve as the alternate. Under this scenario, the following would be the rotation: Farmersville, Exeter, Lindsay & Woodlake. For 2020-21, Farmersville will be the voting board member and Exeter would be the alternate.
- The EDC will appoint an Economic Development Technical Advisory Committee that will consist of designated representatives from each of the participating jurisdictions. The strategy committee will serve in an advisory role to the Board and EDC staff for economic development implementation and will have responsibility for preparing the 5-year Comprehensive Economic Development Strategy. This will allow for the coordinated development and implementation of economic development activities with involvement from all of the jurisdictions.

The proposed governance changes would reduce the public sector representation from 9 members to 6 members.

Fiscal Policies

The current operational policy of the Board provides that if a public sector does not make their contribution in a fiscal year, the EDC has drawn from reserves to cover the shortage and keep the funding level the same. This is not a sustainable approach given that the EDC has expended most of its reserves under this policy and would not be able to maintain this policy and keep commitments to maintaining loan funds, loan loss reserves and business incentive programs. Likewise, the bylaws requires “each public member shall be assessed, on an annual basis for the coming fiscal year, contribution levels sufficient to produce revenue in an amount to cover expenditures approved as part of the Corporation’s annual budget for the fiscal year”. Consequently, the Admin Committee recommends that the Board adopt a new policy effective July 1, 2020 as follows:



TULARE COUNTY ECONOMIC DEVELOPMENT CORPORATION

Agenda Report – April 22, 2020

It is the policy of the EDC Board of Directors that consistent with the EDC bylaws, the public sector shall provide sufficient revenue to cover the expenditures as outlined in the approved contribution formula. To meet the intent of the bylaws, budget requirements and this policy, any amount that is not received from a public sector member shall be equally distributed to the remaining members on the basis of their share of budget per the contribution formula. As an alternative, the Board may direct, at the recommendation of the Administrative Committee, a reduction in expenses to absorb the shortage of revenue.

Future Directions

The EDC is expanding programs and services, particularly in the area of business lending. Under several different federal requirements, the Board of Directors is required to have a majority of its members from the private sector. The EDA requires this for the approval of the 5 year Comprehensive Economic Development Strategy and the SBA has specific requirements as to representation from commercial lending and other sectors. These changes will facilitate the alignment of the EDC to better compete for grant opportunities and funds in the future.

As the loan fund and other programs grow, it is anticipated that additional changes to the bylaws will be necessary. Likewise, the programs and activities of the Sequoia Regional Economic Development Foundation and the Tulare County Community Investment Fund, both related by separate nonprofits, may also necessitate changes moving forward.

Summary

The Admin Committee advances these recommendations to address the question of equity, but also to advance the organization structure to best suit the growing opportunities for the future of the EDC. It also desires to protect further decreases in the investment fund and allow time for the fund to be restored to the original intent of generating market gains in which the EDC can utilize to operate.

